(1)

No. 97-7597-CSY Title: Patrick Knowles, Petitioner
v.
Iowa

Docketed: January 22, 1998 Court: Supreme Court of Iowa

| Entry | Date | Proceedings and Orders |
|---|---|---|
| | Jan 20 1998 | Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due February 21, 1998) |
| | Feb 23 1998 | Brief of respondent Iowa in opposition filed. |
| | Mar 5 1998 | DISTRIBUTED. March 20, 1998 |
| | Mar 23 1998 | Petition GRANTED.<br>SET FOR ARGUMENT November 3, 1998.<br>********** |
| | Apr 15 1998 | Joint appendix filed. |
| | May 6 1998 | Brief amici curiae of American Civil Liberties Union, et al. filed. |
| | May 29 1998 | Brief of petitioner Patrick Knowles filed. |
| | Jun 24 1998 | Brief amicus curiae of National Association of Police Organizations, Inc. filed. |
| | Jun 29 1998 | Motion of respondent to dismiss the writ of certiorari as improvidently granted filed. |
| | Jul 13 1998 | Extension of time to file respondent's brief on the merits extended ten days from the date the Court rules on the Motion to Dismiss. |
| | Jul 14 1998 | Opposition of petitioner to motion of respondent filed. |
| | Aug 12 1998 | Motion of respondent to dismiss the writ of certiorari as improvidently granted DENIED. |
| | Aug 12 1998 | Order extending time to file brief of respondent on the merits until August 26, 1998. |
| | Aug 24 1998 | Brief of respondent Iowa filed. |
| | Sep 17 1998 | CIRCULATED. |
| | Sep 21 1998 | Record filed. |
| | Sep 25 1998 | Reply brief of petitioner Patrick Knowles filed. |
| | Oct 1 1998 | Trial record for Patrick Knowles received. |
| | Nov 2 1998 | Motion of petitioner for appointment of counsel filed. |
| | Nov 3 1998 | ARGUED. |
| | Nov 16 1998 | Motion for appointment of counsel GRANTED and it is ordered that Paul Rosenberg, Esquire, of Des Moines, Iowa, is appointed to serve as counsel for the petitioner in this case. under Rule 39.6 of the Rules of this Court. |



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NO. 97-7597

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**IN THE SUPREME COURT OF THE UNITED STATES**
**OCTOBER TERM, 1997**

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**PATRICK KNOWLES,**

**Petitioner**

**vs.**

**STATE OF IOWA,**

**Respondent.**

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**ON PETITION FOR WRIT OF CERTIORARI**
**TO THE IOWA SUPREME COURT**

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# PETITION FOR WRIT OF CERTIORARI

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Knowles
v.
Iowa

## QUESTIONS PRESENTED FOR REVIEW

Can a state, consistent with the Fourth Amendment, enact a statute conferring to police a blanket authorization to conduct a full-blown search of a motor vehicle upon issuance of a traffic or equipment citation?



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## OPINION BELOW

*State v. Knowles*, 569 N.W.2d 601 (Iowa 1997).

## JURISDICTION

The Iowa Supreme Court entered its decision on October 22, 1997. Jurisdiction of this Court is conferred by 28 U.S.C. § 1257(a). This petition is timely filed under Supreme Court Rule 13.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Iowa Code section 805.1(1) (1997)

Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant, or if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

### Iowa Code section 805.1(4) (1997)

The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search.

## STATEMENT OF THE CASE

### Facts and Course of Proceedings

On March 9, 1996, Patrick Knowles was operating his motor vehicle in the city of Newton, Iowa, and was pulled over for speeding. (Suppression Hearing Tr. pp. 5-6; App. pp. A-16 - A-17). The police officer approached Knowles's car, requested his license, and returned to his patrol car. (Suppression Hearing Tr. pp. 9-10; App. pp. A-20 - A-21). A check determined that his license was valid and there were no warrants for his arrest. (Suppression Hearing Tr. pp. 9-10; App. pp. A-20 - A-21). After issuing a speeding citation, the officer detained Knowles and proceeded to thoroughly search both his person and the passenger compartment of his vehicle. (Suppression Hearing Tr. pp. 10-11; App. pp. A-21 - A-22). The officer located marijuana and a pipe, and Knowles was then placed under arrest. (Suppression Hearing Tr. p. 8; App. p. A-19).

The State charged Knowles with the offenses of possession of marijuana and keeping marijuana in a motor vehicle. Knowles filed a motion to suppress under the Fourth Amendment to the United States Constitution, challenging the search and admissibility of the marijuana and pipe. (Motion to Suppress; App. p. A-10).

At the evidentiary hearing, the arresting officer testified that he had no probable cause or suspicion that Knowles was involved in any criminal activity nor did he consent to the search of his person or his automobile. (Suppression Hearing Tr. pp. 8-10; App. p. A-19 - A-21). The officer gave the following justification for his actions: "I wrote up the



citation and waited for Officer Springer to come and assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation." (Suppression Hearing Tr. p. 10; App. p. A-21). Following the hearing, the court denied the motion to suppress. (Ruling on Motion to Suppress; App. p. A-6).

The court found Knowles guilty on both offenses and was sentenced to concurrent terms of 90 days imprisonment on each charge. (Judgment Entries; App. p. A-8).

Knowles appealed the denial of the suppression motion to the Iowa Supreme Court, challenging the search under the Fourth Amendment and the constitutionality of Iowa's statute, section 805.1(4), to the extent that it authorizes a search incident to a citation. (Appellant's Brief; App. p. A-30).

In a 5 to 4 decision, the Iowa court affirmed the convictions, finding initially that the search was justified solely on the authority conferred by Iowa Code section 805.1(4), and then holding that a vehicular search incident to a traffic citation is constitutionally permissible and the statute is therefore valid under the fourth Amendment. (Opinion of the Iowa Supreme Court; App. p. A-1).

## ARGUMENT

There are three justifications for granting a writ of certiorari: First, the Iowa statute authorizing a motor vehicle search incident to issuance of a traffic citation violates the

Fourth Amendment; second, Iowa is the only state or federal jurisdiction to authorize a search incident to citation, and a significant number of jurisdictions have specifically found the practice to violate the Fourth Amendment; and third, Iowa's blanket authorization to search a motor vehicle based on issuance of a traffic citation is arbitrary and almost certainly invites police to utilize the power in a discriminatory manner.

**1. Search Incident to Citation Violates the Fourth Amendment.**

Iowa law permits a police officer to make an arrest for a traffic violation. Iowa Code § 804.7 (1997). The police officer, however, has discretion to issue a citation in lieu of arrest. *Id.* § 805.1(1). If the officer issues a citation, he or she is authorized by statute to conduct an "otherwise lawful search." *Id.* § 805.1(4). The Iowa Supreme Court has interpreted this statutory scheme to allow a search without an arrest whenever the officer "could have" made an arrest. *State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997).[1] This includes any traffic infraction: "If the officer is legally permitted and objectively authorized to make an arrest, he is, for that reason alone, also authorized to make the search." *Id.* The holding is an unprecedented expansion of Fourth Amendment jurisprudence.

This Court has held that an officer may search a defendant's person incident to a lawful custodial arrest, even if the arrest is for a traffic violation. *United States v.*

[1] The Iowa Supreme Court based its decision in this case on *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), which was decided five months prior to *State v. Knowles*, 569 N.W.2d 601 (Iowa 1997).



*Robinson*, 414 U.S. 218, 235, 94 S. Ct. 467, 477, 38 L.Ed.2d 427 (1973); *Gustafson v. Florida*, 414 U.S. 260, 265-66, 94 S. Ct. 488, 491-92, 38 L.Ed.2d 456 (1973). "In the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but it is also a 'reasonable' search under that Amendment." *Robinson*, 414 U.S. at 235, 94 S. Ct. at 477. *Robinson* clearly established an officer's authority to search incident to an arrest, but this Court specifically declined to address the issue of whether a search would be permitted where there was only a routine traffic stop and not a full custodial arrest. *Robinson*, 414 U.S. at 235 n.6, 94 S. Ct. at 477 n.6.

The *Robinson* Court explained that the justification behind the search incident to arrest exception rests equally on the need to disarm a suspect as well as the need to preserve evidence to be used at trial. The issuance of a citation, however, does not present the same concerns which support the search incident to arrest.

The need to protect the officer's safety is not as great in the case of a traffic stop as it is in a full custodial arrest:

> It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

*Robinson*, 414 U.S. at 234-35, 94 S. Ct. 476.

The crux of this Court's opinion in *Robinson* is that it is the fact of the custodial arrest that gives the officer the authority to search the defendant. *Robinson,* 414 U.S. 15 234-35, 94 S. Ct. at 476. In *Gustafson*, the Court outlined the determinative factors in a search incident to arrest: the officer had probable cause to arrest, he effectuated the arrest, and he placed the defendant in custody. *Gustafson*, 414 U.S. at 265, 94 S. Ct. at 491-92.

Under this exception, an officer who places a person under lawful arrest may search the person and the area within his immediate vicinity as long as the search is reasonable and for the purposes of removing weapons to protect the safety of the officer or to preserve evidence of the crime to prevent its concealment or destruction. *Chimel v. California*, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L.Ed.2d 685 (1969). The scope of a search incident to arrest when the defendant is in an automobile extends to the entire passenger compartment of the vehicle, including any containers therein. *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981).

In *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S. Ct. 2000, 2004, 36 L.Ed.2d 900 (1973), this Court distinguished a traffic stop from an arrest: "[w]here there is no formal arrest . . . a person might well be less hostile to the police and less likely to take conspicuous, immediate steps to destroy incriminating evidence. . . ." Therefore, a full *Chimel* search is not justified without a formal arrest. *Id.* The "detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of detentions last only a few minutes." *Berkemer v. McCarthy*, 468 U.S. 420, 437, 104 S.



Ct. 3138, 3149, 82 L.Ed.2d 317 (1984). For these reasons, the *Berkemer* Court decided that "the usual traffic stop is more analogous to a so-called *Terry*-stop than to a formal arrest," and, therefore, a person detained for a traffic stop is not in custody for purposes of *Miranda*. *Id.* at 439-40, 104 S. Ct. at 3150.

In its rulings in this case and other similar rulings, the Iowa Supreme Court has dispensed with any case-by-case consideration of the facts surrounding the search. As the dissenting opinion in *Knowles* pointed out, "[t]he constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract." *Knowles*, 569 N.W.2d at 603 (Neuman, J., dissenting).

**2. Conflict Among Jurisdictions**

Other state and federal courts contradict the law in Iowa. Arizona has a statute similar to Iowa's statute. Ariz. Rev. Stat. § 13-3903 (1989). This statute states that the police officer may release an arrested person from custody in lieu of taking the person to the police station. *Id.* § 13-3903(A). It also states that "[n]othing in this section shall be construed to affect a peace officer's authority to conduct an otherwise lawful search incident to his arrest even though such arrested person is released before being taken to the police station . . . ." *Id.* § 13-3903(F). Despite this statute, the Arizona Court of Appeals held that police officers could not search a person they observed illegally drinking beer in a city park when they intended only to issue a citation for the offense.

*State v. Taylor*, 808 P.2d 324, 324-25 (Ariz. Ct. App. 1990), *rev. denied*, 821 P.2d 166 (Ariz. 1991), *cert. denied*, 503 U.S. 998, 112 S. Ct. 1705, 118 L.Ed.2d 413 (1992). That court held that the reasoning in *Robinson* could not apply to a situation where the person is not taken into custody. *Id.* at 324 (citing *Robinson*, 414 U.S. 218, 235, 94 S. Ct. 467, 476, 38 L.Ed.2d 427, 440 (1973); *Gustafson*, 414 U.S. 260, 94 S. Ct. 488, 38 L.Ed.2d 456 (1973)).

The Maryland Court of Appeals addressed the constitutionality of a search of the contents of a vehicle based only on issuance of a citation. In *Daugherty v. State*, 392 A.2d 1165, 1167 (Md. Ct. Spec. App. 1978), the defendant was cited for hunting deer with a firearm in his possession during the closed season. *Id.* The officer detained the defendant and issued the citation while he was walking from the woods to his vehicle. *Id.* The officer then searched the car and found marijuana inside. *Id.* The court stated that the "search of the . . . car without having first obtained a search warrant cannot be justified as a search incident to an arrest. That exception to the warrant requirement encompasses only in-custody arrests." *Id.* (citing *Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973)). The defendant was not taken into custody for the infraction. *Id.*

The Wisconsin Supreme Court held that an officer cannot conduct a warrantless search based on the fact that the defendant could have been arrested, but was not. *State v. Swanson*, 475 N.W.2d 148, 155 (Wis. 1991). In that case, Swanson drove his car onto the sidewalk, nearly hitting a pedestrian. *Id.* at 150. When stopped by police and asked to



exit the car, the officer conducted a pat down search and found a bag of marijuana in Swanson's pocket. *Id.* The court held that Swanson was not under arrest and could not be searched basing its determination on *Berkemer v. McCarthy*, 468 U.S. 420, 104 S. Ct. 3138, 82 L.Ed.2d 317 (1984), where this Court decided that a temporary detention for the purposes of a routine traffic stop is not considered custody for the purposes of *Miranda*. *Id.* at 440, 104 S. Ct. at 3150. The court rejected the argument that Swanson could have been arrested for various traffic offenses: "We require that the State show that an arrest actually took place for something other than possession of a controlled substance. This requirement will ensure that the police do not arbitrarily violate an individual's privacy." *Id.* at 155. The court decided the search should be analyzed under *Terry*, and this search exceeded the scope of a frisk allowed by *Terry*. *Id.* at 155-56; *see Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).

Many other states have held that the search incident to arrest doctrine requires an actual custodial arrest. The Colorado Supreme Court decided that *Robinson* and *Gustafson* require police to effectuate a full custodial arrest in order to search incident to that arrest. *People v. Bland*, 884 P.2d 312, 317 (Colo. 1994). The court also decided that a temporary detention did not constitute a custodial arrest and therefore no search would be allowed. *Id.* at 318.[2]

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[2] *See also State v. Davis*, 477 So. 2d 504, 506 (Ala. Ct. App. 1985) (Without a lawful custodial arrest, there is no authority for a full search under the search incident to arrest exception.); *Thomas v. State*, 453 So. 2d 1075, 1077 (Ala. Ct. App. 1984) (stating

Contrary to the Iowa Supreme Court, many other state courts require more than a mere traffic violation to justify a search. For example, in numerous cases in Illinois, the courts have decided that when a vehicle is stopped for a minor traffic violation, a search is not justified unless the officer has evidence that a more serous crime has been committed.[3] In Pennsylvania, a vehicle stopped for a traffic violation may not be searched unless there is independent probable cause. *Commonwealth v. Germann*, 621 A.2d 589, 592 (Pa. Super. Ct. 1993); *see also Commonwealth v. Grosso*, 672 A.2d 792, 794 (Pa. Super. Ct. 1996). Courts in Alabama, Colorado, Florida, North Carolina, Ohio, Oregon, and Washington, among other states, have handed down similar opinions.[4]

Some federal courts have also addressed this question. In *United States v. Parr*,

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"the search-incident-to-arrest exception to the warrant requirement arises only when there is a custodial arrest"); *State v. Ledbetter*, 540 P.2d 824, 826 (N.M. Ct. App. 1975) (stating that because the driver was not taken into custody for the driving violation, *Robinson* is not applicable and the search cannot be justified by the search incident to arrest theory); *Linnett v. State*, 647 S.W.2d 672, 674-75 (Tx. Ct. App. 1983) (*Belton* is not applicable unless there is a custodial arrest.).

[3] *People v. Koutsakis*, 649 N.E.2d 605, 608 (Ill. Ct. App. 1995); *People v. Sullivan*, 612 N.E.2d 1000, 1003 (Ill. Ct. App. 1993); *People v. Stewart*, 610 N.E.2d 197, 202 (Ill. Ct. App. 1993); *People v. Innis*, 604 N.E.2d 389, 392 (Ill. Ct. App. 1992); *People v. Harris*, 557 N.E.2d 1277, 1279 (Ill. Ct. App. 1990); *People v. Penny*, 544 N.E.2d 1015, 1017 (Ill. Ct. App. 1989); *People v. Lawrence*, 529 N.E.2d 63, 65 (Ill. Ct. App. 1988); *People v. Corral*, 498 N.E.2d 287, 291 (Ill. Ct. App. 1986).

[4] *State v. Washington*, 623 So. 2d 392, 395 (Ala. Crim. App. 1993); *People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988); *Johnson v. State*, 537 So. 2d 117, 119 (Fla. Ct. App. 1988); *State v. Braxton*, 368 S.E.2d 56, 57-59 (N.C. Ct. App. 1988); *State v. Taylor*, 683 N.E.2d 367, 370 (Ohio Ct. App. 1996); *State v. Flores*, 685 P.2d 999, 1005 (Or. Ct. App. 1984); *State v. Henry*, 910 P.2d 1290, 1293 (Wash. Ct. App. 1995).



843 F.2d 1228, 1229 (9th Cir. 1988), the defendant was stopped because the officer suspected his driver's license was suspended. *Id.* The officer asked Parr to exit the vehicle, searched him, and placed him in the patrol car. *Id.* The officer then removed a bag from the car, searched it, and found a "narcotics kit." *Id.* The court determined that Parr was detained, but not under arrest, at the time of the search. *Id.* at 1230. The determinative question was whether the defendant was in custody, because anything less than that would render the search unconstitutional.[5] *Id.* at 1231; *see also United States v. Mota*, 982 F.2d 1384, 1386 (9th Cir. 1993); *United States v. Suarez*, 694 F. Supp. 926, 934 n.6 (S.D. Ga. 1988), *aff'd*, 855 F.2d 1574 (11th Cir. 1989)).

Iowa stands alone in permitting a motor vehicle search based only on issuance of a traffic citation. This author can find no other jurisdiction that has addressed the issue and not condemned the practice.

### 3. Arbitrary and Discriminatory Enforcement

The Fourth Amendment requires justification, usually in the form of probable cause or reasonable suspicion, before a search is authorized. This justification acts to protect citizens from random and arbitrary governmental intrusion.

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[5] *See United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (stating a traffic stop is like an investigatory detention, not a custodial arrest, and *Terry* governs); *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990) (stating the decision to detain and search a vehicle is governed by *Terry*); *United States v. Morris*, 910 F. Supp. 1428, 1444 (N.D. Iowa 1995) (stating that if the officer desires to search a vehicle for a purpose unrelated to the traffic stop, the search must be justified under *Terry*).

A blanket authorization to search incident to a traffic citation allows the search of a motor vehicle with no probable cause or reasonable suspicion of any unlawful conduct. Because the police certainly cannot expect to find contraband or evidence relating to the traffic infraction for which the citation is issued, the search is therefore utterly arbitrary.

In addition, since police routinely issue large numbers of traffic citations, two equally intolerable results will occur. Either all motorists will be searched or police will pick and choose which vehicles to search in their unbridled discretion. The most likely scenario is that police will target those individuals who are "profiled" as offenders, i.e., young people, minorities, etc.

Finding a vehicular traffic or equipment violation is easy. Follow any motor vehicle for a few blocks and an infraction of some sort can be observed. Allowing a full-blown search on this basis will allow police in effect to search any vehicle they choose.

Granting a blanket authorization to search incident to citation invites the very mischief that the Fourth Amendment was intended to eradicate. The potential for abuse is only limited by the number of motor vehicles that travel the streets and highways in Iowa.

## CONCLUSION

A search such as the one in this case can only be decided on a case-by-case basis, applying *Terry* when there is no custodial arrest. Knowles was not placed under arrest, and there were no circumstances giving rise to any suspicion that Knowles was involved in any criminal activity other than speeding. A routine traffic stop has been distinguished



form a custodial arrest in this Court and many other courts. Iowa's decision to treat them as the same thing cannot satisfy constitutional requirements. There is no support for this decision other than Iowa's statute that purportedly authorizes such searches. The statute authorizes the officer to make an "otherwise lawful search" after issuing a citation, but a search based only on the citation and nothing more is not an otherwise lawful search.

The touchstone of the Fourth Amendment is reasonableness. *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S. Ct. 1801, 1803, 114 L.Ed.2d 297 (1991). "'Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed arrests or investigatory detentions.'" *Cupp v. Murphy*, 412 U.S. at 794, 93 S. Ct. at 2003 (quoting *Davis v. Mississippi*, 394 U.S. 721, 726-27, 89 S. Ct. 1394, 1397, 22 L.Ed.2d 676 (1969)).

If a police officer is given the green light to conduct a full search of motorists and their vehicles every time he or she issues a citation for a minor traffic violation without any further suspicion of criminal activity, it can safely be said that a wholesale intrusion upon the personal security of our citizenry has taken place. If the police officer wishes to conduct a full search of a vehicle, he only has to wait until any traffic violation has occurred, no matter how insignificant. Few drivers would feel secure in their persons and effects if their persons and effects could be the subject of a full search because a brake light or license plate light has gone out.

This unfettered power virtually obviates the need for the *Terry* standard. If,

however, police officers are required to make a custodial arrest of the driver, the officers would be more discerning regarding who they choose to arrest for traffic violations and subsequently search. This encourages a self-imposed check on the extensive power of the police to intrude into our lives. There is no question that the safety of police officers is a valid and important state interest and can be the only state interest advanced to justify a suspicionless search. However, the only way to ensure an officer's safety in every circumstance is to destroy the privacy the Fourth Amendment affords our citizenry.

The Iowa Supreme Court's determination that police, by statute, may automatically search a vehicle when a citation is issued, requiring no suspicion of criminal activity, is a transgression of the Fourth Amendment. The search of Patrick Knowles's vehicle was unlawful and the evidence seized as a result must be suppressed. For these reasons, petitioner respectfully prays the Court grant his Petition and reverse the decision of the Iowa Supreme Court.



**PROOF OF SERVICE**

On the 20th day of January, 1998, I, the undersigned did serve Petitioner's Writ of Certiorari to the Iowa Supreme Court on all other parties to this appeal by mailing one (1) copy thereof to the following counsel:

Mr. Tom Miller
Attorney General
Criminal Appeals Division
Hoover Building
Des Moines, IA 50309
Telephone: (515) 281-5164

J. Keith Rigg

**CERTIFICATE OF FILING**

On the 20th day of January, 1998, I the undersigned, did file Petitioner's Writ of Certiorari to the Iowa Supreme Court with the Clerk of United States Supreme Court, by timely mailing, by First Class U.S. mail, pursuant to Supreme Court Rule 12(2) an original and ten (10) copies to said Clerk at the Supreme Court of the United States, One First Street, N.E., Washington D.C. 20543.

J. Keith Rigg

## APPENDIX


1. Opinion of the Iowa Supreme Court ..... A-1
2. Ruling on Motion to Suppress ..... A-6
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## IN THE SUPREME COURT OF IOWA

No. 235 / 96-1584

Filed October 22, 1997

FILED
OCT 22 1997
CLERK SUPREME COURT

**STATE OF IOWA,**

Appellee,

vs.

**PATRICK KNOWLES,**

Appellant.

---

Appeal from the Iowa District Court for Jasper County, Carol Greta and John P. Crouch, District Associate Judges.

Defendant convicted of possession of a controlled substance and keeping a controlled substance in an automobile appeals, challenging evidentiary rulings allowing evidence of marijuana obtained by a search of his person and automobile incident to the issuance of a traffic citation. **AFFIRMED.**

Maria Ruhtenberg of Paul Rosenberg & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and James Cleverley, Jr., Assistant County Attorney, for appellee.

Considered en banc.



10-2

**CARTER, Justice.**

Defendant, Patrick Knowles, was convicted of possession of a Schedule I controlled substance (marijuana) in violation of Iowa Code section 124.401(3) (1995) and keeping a controlled substance in an automobile in violation of Iowa Code section 124.401(1)(e). He appeals and challenges evidentiary rulings that allowed evidence of marijuana that had been obtained by a search of his person and automobile incident to the issuance of a traffic citation. Defendant divides his grounds for reversal into four contentions: (1) the lack of probable cause to search under the Fourth Amendment to the federal constitution, (2) the invalidity of a purported statutory grant of authority to search based on the issuance of a traffic citation, (3) the invalidity of a purported authorization for custodial arrest for a speeding violation under the seizure restrictions of the Fourth Amendment to the federal constitution, and (4) that it was unreasonable to detain the defendant after the issuance of the citation had been completed. Because we find the controlling issues of law have been determined adversely to defendant in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we affirm the judgment of the district court.

We need not consider defendant's first contention as existing separate and distinct from the second. The State does not contend that there was probable cause to search under the warrant standards of the Fourth Amendment. Defendant was stopped by police for driving at an excessive speed. There were no circumstances indicating that evidence of crime existed on his person or in his automobile. The officer's election to search his person and his car was based solely on the perceived authority to search conferred by Iowa Code section 805.1(4). We thus proceed to the consideration of defendant's contention that this statute is unconstitutional.





We have consistently interpreted section 805.1(4) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996); *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). Defendant does not contest the fact that he was speeding or that there was a statutory basis for arrest. *See* Iowa Code § 804.7. In *Doran* we upheld the authority to search conferred by section 805.1(4) in the face of challenges based on the Fourth Amendment and article I, section 8 of the Iowa Constitution.

Defendant urges us to reconsider our *Doran* holding. He asserts that, because the "search incident to an arrest" exception to the Fourth Amendment is the only constitutional predicate on which the State seeks to support the authority to search his person and automobile, there must have in fact been a custodial arrest to satisfy the limitations on searches imposed by the Fourth Amendment. He urges that our holding in *Doran* that the constitutional basis for the "search incident to an arrest" exception is satisfied by the presence of grounds for arrest rather than the making of a custodial arrest is misguided. We disagree. The suggestion that the constitutional basis for the "search incident to an arrest" exception is an actual arrest is belied by those decisions that hold that the timing of the arrest need not precede the search. *See State v. Peterson*, 515 N.W.2d 23, 25 (Iowa 1994); *State v. Beatty*, 305 N.W.2d 496, 498 (Iowa 1981). And, when the search produces an independent ground for an arrest on a more serious charge, the foregoing of an arrest for the traffic violation does not defeat the authority to search. *See People v. Rossi*, 102 Ill. App. 3d 1069, 1073, 430 N.E.2d 233, 236 (1981).

We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make

a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of the authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

Defendant's third point, which suggests that the statutory authorization for a custodial arrest on a speeding charge is an unlawful authorization of an illegal seizure of the person under the Fourth Amendment, was not raised in the motion to suppress before the district court and thus may not be considered by us. His argument that he was unreasonably detained following the issuance of the citation must be rejected because the further detention was for purposes of making a search that has now been determined to be lawful. We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

**AFFIRMED.**

All justices concur except Neuman, Lavorato, Snell, and Ternus, JJ., who dissent.





**NEUMAN, Justice** (dissenting).

For the reasons expressed in my dissent to *State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997) (Neuman, J., dissenting), I cannot join the majority opinion. The constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract. The validity of such a search is "pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59, 88 S. Ct. 1889, 1901, 20 L. Ed. 2d 917, 932 (1968). The United States Supreme Court has never departed from this principle and neither, I respectfully suggest, should we.

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, | : | Nos. AGCR2757, SRCR2758 |
| Plaintiff, | : | |
| vs. | : | |
| PATRICK GEORGE KNOWLES, | : | RULING ON MOTION TO SUPPRESS |
| Defendant. | : | |

This matter came on for hearing before the Court on the Defendant's motion to suppress evidence. The Defendant appeared personally with his attorney, Maria Ruhtenberg. The State was represented by Assistant Jasper County Attorney, James Cleverley.

Testimony was taken from one witness, Newton Police Officer Ron Cook, who issued a citation in lieu of arrest to the Defendant for speeding. The facts are undisputed. Officer Cook stopped the Defendant's motor vehicle early in the evening of March 9, 1996. After issuing the speeding citation, Officer Cook searched the Defendant's vehicle incident to the citation and found a quantity of marijuana in the vehicle.

The sole purpose of the stop was to issue a speeding citation. After ascertaining the identity of the Defendant, who was the sole occupant of the motor vehicle, Officer Cook stated that he recognized the Defendant as having prior involvement with possession of controlled substances and drug paraphernalia. However, Officer Cook also testified that he observed nothing in the course of the stop that make him suspicious of the Defendant or his activities. Therefore, both parties agree that justification of the search in question must succeed or fail





solely as a search incident to the issuance of the speeding citation.

The Defendant concedes that the Iowa Supreme Court has on two occasions ruled that a search incident to a citation is tantamount to a search incident to an arrest. State v. Cook, 530 N.W.2d 728 (Iowa 1995); State v. Meyer, 543 N.W.2d 876 (Iowa 1996). In both cases the high court reasoned that because the officer could have arrested the defendant under Iowa law instead of issuing a citation and could have conducted a search incident to such arrest, then the officer could search incident to a citation.

The Defendant argues that the supreme court did not consider in either Cook or Meyer the constitutional implications of Iowa Code §805.1(4) (1995), which states that "[t]he issuance of a citation in lieu of arrest . . . does not affect the officer's authority to conduct an otherwise lawful search." However, in both of those cases, the court stated that its review was de novo because constitutional issues were at stake, indicating that the supreme court was well aware of the tension created by the statute vis-a-vis the fourth amendment.

This Court, having no basis on which to grant the Defendant's motion to suppress, DENIES the same.

Maria Ruhtenberg

PROOF OF SERVICE
... above cause by depositing ... postage prepaid, in envelopes ... of record herein at their respective addresses ... on the ... day of ... 19 ...

Carol Nowell
Judge, 5th Judicial District

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA,<br>Plaintiff, | : | SR CR002758 |
| vs. | : | JUDGMENT ENTRY |
| PATRICK GEORGE KNOWLES,<br>Defendant. | : | |

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CLERK OF DISTRICT COURT

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of possession of a Schedule I Controlled Substance, to wit: marijuana in violation of Section 124.401(3), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $250.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002757, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.

Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

Judge, Fifth Judicial District
of Iowa



IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA,<br>Plaintiff, | : | AG CR002757 |
| vs. | : | JUDGMENT ENTRY |
| PATRICK GEORGE KNOWLES,<br>Defendant. | : | |

FILED
96 SEP 10 AM 8:13
CLERK OF DISTRICT COURT

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of prohibited acts by a registratnt, keeping a controlled substance, to wit: marijuana in a motor vehicle in violation of Section 124.401(1)(e), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $500.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002758, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.

Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

Judge, Fifth Judicial District
of Iowa

**IN THE IOWA DISTRICT COURT FOR JASPER COUNTY**

| | | |
|---|---|---|
| STATE OF IOWA,<br><br>Plaintiff,<br><br>vs.<br><br>PATRICK KNOWLES,<br><br>Defendant. | ) | **Criminal No. SRCR2758**<br>**SRCR2757**<br><br><br><br><br>**DEFENDANT'S MOTION TO SUPPRESS** |

The defendant, Patrick George Knowles, moves this Court to suppress evidence seized in violation of the United States Constitution and states the following in support:

1. On March 9, 1996, the defendant was stopped for speeding while driving in Newton, Iowa.

2. The officer issued the defendant a traffic citation for the speeding violation after determining that the defendant had a valid driver's license and no outstanding arrest warrants.

3. The officer then requested the defendant to exit the car, and the officer searched the defendant and his car.

4. During the search, the officer found what he believed to be marijuana under the driver's seat.

5. On May 2, 1996, a trial information was filed charging the defendant with Possession of a Schedule I Controlled Substance in violation of Iowa Code § 124.401(3) (Case No. CR 2758). On the same date, another trial information was filed charging the defendant with Prohibited Acts by a Registrant, Keeping a Controlled Substance in violation of Iowa Code § 124.402(1)(3) (Case No. CR 2757). Both of these charges arose from the search of the defendant's car and the seizure of the marijuana.



6. The officer did not have probable cause to search the defendant's car, nor did he obtain a search warrant.

7. The officer stated in his report that the search was conducted "incident to citation."

8. No such exception to the warrant requirement exists under the Fourth Amendment to the Constitution.

9. Because the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional, and the marijuana seized during the search must be suppressed.

10. In addition, when the officer issued the citation to the defendant, the officer had effectuated the purpose of the stop, and the further detention to search was without probable cause and unreasonable and therefore unconstitutional under the Fourth Amendment.

WHEREFORE, the defendant respectfully requests this Court suppress the marijuana unconstitutionally seized from the defendant's car.

PAUL ROSENBERG & ASSOCIATES, P.C.
601 Locust Street, Suite 1022
Des Moines, Iowa 50309
Telephone (515) 245-3828
Fax (515) 247-2207

By: Maria Ruhtenberg
Maria Ruhtenberg (PK0014905)
ATTORNEY FOR DEFENDANT

Copy to:
Christine Brandstad; Jasper County Attorney's Office, 301 Courthouse, 100 1st St. N., Newton, IA 50208
Patrick Knowles, Jasper County Jail; 115 N. 2nd E; Newton, IA 50208

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, Plaintiff, | ) | CRIMINAL NOS. AGCR002757 SRCR002758 |
| vs. | ) | |
| PATRICK GEORGE KNOWLES, Defendant. | ) | TRANSCRIPT OF PROCEEDINGS |

THE ABOVE-ENTITLED MATTER came on for hearing before the Honorable Carol Greta, Judge, at 2:46 p.m., June 26, 1996, at the Jasper County Courthouse in the City of Newton, Jasper County, Iowa.

A P P E A R A N C E S

James Cleverley, Jr., Assistant County Attorney, Jasper County Courthouse, 100 First Street North, Newton, Iowa 50208, counsel for the State of Iowa.

Maria Ruhtenberg, Attorney at Law, 601 Locust Street, Suite 1022, Des Moines, Iowa 50309, counsel for the Defendant.

Jacqueline D. Veatch, CSR, RPR
307 North I Street
Indianola, Iowa 50125





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P R O C E E D I N G S

THE COURT: Madam reporter, this is in Cause Nos. SRCR002758 and AGCR002757. Both of them are entitled State of Iowa vs. Patrick George Knowles. Mr. Knowles does appear personally for the purpose of a Motion to Suppress Evidence with his attorney, is it pronounced Maria Ruhtenberg?

MS. RUHTENBERG: That's right, Your Honor.

THE COURT: And the State of Iowa is represented by Assistant Jasper County Attorney, James Cleverley, Jr. Mr. Cleverley, are you ready to proceed?

MR. CLEVERLEY: Yes, Your Honor.

THE COURT: Ms. Ruhtenberg, are you ready to proceed?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Will there be any evidence taken?

MR. CLEVERLEY: Yes, we would call Officer Cook.

THE COURT: And before you step up, Mr. Cook, will there be any witnesses on behalf of the defendant?

MS. RUHTENBERG: No, Your Honor. Officer Cook is the only one.

THE COURT: Officer Cook, why don't you come forward to be sworn.





OFFICER RONALD J. COOK,

called as a witness by the State, being first duly sworn by the Court, was examined and testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CLEVERLEY:

Q. Could you please state your name.

A. Ronald J. Cook.

Q. How are you employed?

A. I'm a police officer with the City of Newton.

Q. How long have you been a police officer for the City of Newton?

A. Since November 1992.

Q. And on March 9th of 1996, were you employed as a police officer?

A. Yes, sir, I was.

Q. And you're a certified peace officer?

A. Yes, sir, I am.

Q. You have the authority to write and issue citations; is that correct?

A. Yes, sir, I do.

Q. Now, on March 9th of 1996, did you have an occasion to come into contact with a Mr. Patrick George Knowles?

A. Yes, sir, I did.

Q. And where was that contact first made?

A. Would have been in the -- approximately the 300 block of East 12th Street South.

Q. And what brought your attention to either Mr. Knowles or to the vehicle he was in?

A. I was going northbound on East 12th Street South from South Fifth Avenue when I observed a vehicle approaching at a high rate of speed going southbound on East 12th.

Q. And did you make a determination of the speed of the vehicle at that time?

A. Yes, sir, I had a good Doppler tone on the radar and reading of 43.

Q. Prior to activating the radar, had you made any independent observation of your own as to what the speed of that vehicle might be?

A. Just that it was going in excess of 25 miles an hour.

Q. And so the radar readout showed 43, and this is a 25 mile an hour speed zone; is that correct?

A. Yes, sir.

Q. What did you do then after getting the radar reading?

A. I waited until the vehicle passed me, and I pulled into a drive to turn around to catch up to the





vehicle.

Q. And at the time that you observed this vehicle and made the radar clocking of it, did you know who was operating that vehicle?

A. No, sir.

Q. When did you discover who the operator of that vehicle was?

A. After I stopped the vehicle, I approached the driver, and he was identified, and I recognized him as Patrick Knowles.

Q. What was the purpose of stopping that vehicle?

A. For speeding.

Q. And did you know Mr. Patrick Knowles after you had stopped the vehicle?

A. Yes, sir.

Q. And prior to stopping the vehicle, what were your intentions to do?

A. Write a speeding citation.

Q. Did you indeed write one?

A. Yes, sir, I did.

Q. And what was that for?

A. 43 miles an hour in a 25 mile an hour zone.

Q. As a law enforcement officer, do you have the authority to arrest people and place them in jail for such a charge?

A. Yes, I do.
Q. And did you choose to do that on this evening?
A. No, I opted to cite in lieu of arrest.
Q. And do you have a copy of that ticket or citation?
A. I don't personally, no.
Q. But you did issue a uniform Iowa citation; is that correct?
A. Yes, sir, that's correct.
Q. And Mr. Patrick Knowles was the driver of that vehicle?
A. Yes, sir, he was.
Q. Was he the sole passenger of the vehicle?
A. Yes, sir, he was.
Q. And are you familiar with Mr. Knowles?
A. Yes, sir, I am.
Q. How are you familiar with Mr. Knowles?
A. Through the drug task force.
Q. And what do you know about Mr. Knowles or what -- yeah, what do you know about Mr. Knowles?
A. I know that he's had problems with paraphernalia and controlled substances in the past.
Q. And did you say anything to Mr. Knowles regarding the search of his vehicle?
A. I just told him that after I issued him a





citation that I had a right to search his person and his vehicle.
Q. Did you ask to search his vehicle?
A. No, sir, I did not.
Q. Did you just go ahead and search it incident to the citation?
A. Yes, sir.
Q. And did Mr. Knowles object to the search of his vehicle?
A. No, I don't believe that he did.
Q. At any time did he consent to the search of his vehicle?
A. No, sir, he did not.
Q. After searching that vehicle, what did you discover?
A. Underneath the driver's seat, I found two cotton gloves. One of them contained a bone, or antler, pot pipe. The other one contained two plastic baggies; one of which was empty, and one of which contained a green plant material.
Q. Why was it that you searched this vehicle?
A. Because I'd issued a citation.
Q. Was it also based on the fact of your prior knowledge of the type of behavior or criminal activity that Mr. Knowles had been involved in?

A. Yes, sir.

Q. And all those events occurred in Jasper County, Iowa?

A. Yes, sir, they did.

Q. Is Mr. Knowles present here today?

A. Yes, sir, he's wearing a white T-shirt.

MR. CLEVERLEY: I have nothing further.

THE COURT: Cross-examination.

MS. RUHTENBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. RUHTENBERG:

Q. Officer Cook, after you stopped Mr. Knowles for speeding, did you run a check on his license?

A. Yes, ma'am, I did.

Q. Okay. Did you obtain a license and registration from Mr. Knowles?

A. I obtained his license. I don't believe I took his registration.

Q. And after you took his license, what did you do?

A. I went back to my vehicle to start writing out a summons, and I also did the check through the computer system on his driver's license.

Q. What did you discover through that check on his driver's license?

A. That he had a valid driver's license, and he had





no outstanding warrants -- arrest warrants.

Q. What did you do after that?

A. I issued -- I wrote up the citation and waited for Officer Springer to come to my location to assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation.

Q. Did you have any other suspicion that he was at that moment involved in any drug activity?

A. Other than my past knowledge of Mr. Knowles, no.

Q. Anything you observed lead you to believe or give you probable cause to believe that he was involved in criminal activity?

A. Not on this date, no.

Q. Was it your feeling that your knowledge of his past problems or your past knowledge of Mr. Knowles, did that give you probable cause to search his vehicle?

A. No, the speeding gave me probable cause to search the vehicle.

Q. And that's what you were thinking at the time of the stop?

A. Yes, ma'am.

Q. Did you physically hand the citation to Mr. Knowles prior to stopping him -- I mean, prior to asking him to exit the car?

A. I don't know if I handed it to him before he got out of the car or after he was standing outside the car.

Q. Was the search of his vehicle and of his person conducted after he received the copy of the citation?

A. Yes, ma'am.

Q. You did stop him for speeding?

A. Yes, ma'am.

Q. At that point when you issue a citation to a person after speeding, have you effectuated the purpose of your stop?

A. Have I finished my stop?

Q. Yes.

A. Yes, ma'am.

Q. Did you need, at that point, to obtain any further evidence of speeding?

A. Not of speeding, no.

Q. It was your understanding that simply because you had issued him a citation that that gave you the right -- without any further probable cause gave you the right to search him and his vehicle?

A. Yes, ma'am.

MS. RUHTENBERG: Okay. I don't have any further questions. Thanks.

THE COURT: Redirect.

MR. CLEVERLEY: Nothing, thank you.





THE COURT: May this witness be excused?

MR. CLEVERLEY: Yes.

MS. RUHTENBERG: Yes.

MR. CLEVERLEY: We'd rest.

THE COURT: And the defendant has no evidence?

MS. RUHTENBERG: No, Your Honor.

THE COURT: Would you like your arguments to be reported?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Mr. Cleverley.

MR. CLEVERLEY: Thank you, Your Honor. I think the sole purpose of the search here is what's come to be known as State v. Cook, some of the issues set forth in there and Meyer. I think there was no indication as to who this individual was at first. The vehicle was caught speeding, that this officer is a certified peace officer. Under Iowa law he does have the authority to arrest people for speeding. He advised the defendant he was going to search incident to a citation, he issued that citation, and then conducted the search. And I believe under the current state of law in Iowa, an officer does have the right to search incident to a citation. I think that the fact that Officer Cook did know of the background of the individual gives a little more credence to his search, but I believe the Court has to look for the real reason of the search and

that was because of the citation in searching it.

THE COURT: Thank you, Mr. Cleverley.

Ms. Ruhtenberg.

MS. RUHTENBERG: Thank you, Your Honor. I believe our arguments are pretty much stated in the brief given to the Court and to the county attorney's office. I'll summarize. Briefly, I believe that State v. Cook and State v. Meyer can be distinguished in this case, primarily because neither one of those cases address the issue under the Fourth Amendment of a search incident to a citation. I cite the Iowa Code section which allows an officer to issue a citation in lieu of an arrest, and the fact that the Iowa Code Section 805.1(4) says that a citation issued in lieu of arrest does not affect the officer's authority to conduct an otherwise lawful search, as a statutory provision which has been interpreted by the Iowa Supreme Court to allow citation -- or search incident to a citation just as a search incident to an arrest but that is not in either case decided, Your Honor, by the Fourth Amendment. And this search incident to a citation is distinguishable from a search incident to an arrest under the Fourth Amendment. It does not fit into the parameters that the Supreme Court has forever laid down for the purpose of the search incident to an arrest. For instance, in the search incident to arrest, for the purpose being to protect the





officer from any danger, the second one being to preserve evidence. Neither one of those issues are present in a search incident to a citation. Once the officer issues the citation, the defendant should be free to leave. He's not in any danger. The United States Supreme Court cases say that an officer is not in as much fleeting authority with every short contact with a defendant, unlike where the person is arrested and the officer has extended exposure. Second of all, once the citation is issued, the officer has no need for further evidence of speeding. The only reason for any further search is sort of a fishing expedition to find other criminal activities simply because he had suspicion because of Mr. Knowles's reputation or other prior criminal history that he might be involved in drugs. This is a synopsis of our argument as to why Cook and Meyer do not apply here.

Second argument if the Court does not buy that is that the Iowa Code Section 805.1(4) is unconstitutional to the extent that it does allow a search incident to citation. For the same reasons I've just discussed, it does not fit within the Fourth Amendment guidelines for search in this situation.

And our last issue besides is that after the officer stops Mr. Knowles for speeding, ran the check, saw that he was not wanted on any arrest warrants, he was

validly driving his car with a valid Iowa driver's license, and issued him the citation, he effectuated the purpose of the stop. The United States Supreme Court has stated that an officer may detain a suspect only for a reasonable amount of time to confirm or dispel suspicions. He is only allowed to detain a suspect for the amount of time to effectuate the purpose of the stop, anything after that -- further detention is unreasonable under the Fourth Amendment and therefore unconstitutional. For all those reasons, we would ask that the Court suppress the evidence during the search of his car. Thank you.

THE COURT: Thank you, Ms. Ruhtenberg. What do you say to this Court's position that if we take your argument to its logical conclusion and if indeed an appellate court agrees with you, then arresting officers are simply going to stop issuing citations in lieu of arrest and arrest everybody?

MS. RUHTENBERG: Well, Your Honor, I think there's just as much danger the other way, that everybody who gets stopped for a seat belt or for a light out can be issued a citation, and probably is usually issued a citation, and everybody's car can be search, and they can be detained for however long that lasts. And I think that's as much of a danger. I believe that we should predetermine the validity of searches based on the -- what





actually happens, and if the officer actually arrests people, then they can search the vehicle. But I think under the Fourth Amendment analysis, I think you're right. That would give the officers more initiative to arrest people, but I also believe, Your Honor, the search incident to citation doesn't fit.

THE COURT: There's no dispute or argument in this case, is there, that this defendant was detained unduly long, is there? There's nothing in the record before me anyway, that there's no factual record showing that Mr. Knowles was detained for X number of minutes. You're not making an argument based on that, are you?

MS. RUHTENBERG: Well, Your Honor, I'm making argument that any detention after the citation was issued was unreasonable, so if you want -- that's one of my arguments.

THE COURT: But you would agree with me that there is no evidence as to how long that time was, whether it was one minute or one hour.

MS. RUHTENBERG: Right.

THE COURT: All right. Thank you. Counsel, you make very good arguments, but I'm afraid this Court believes that the Supreme Court stated in both the Cook and Meyer cases that the constitutional issues were before that court because they stated in both of those cases that their

review was de novo because they were presented with constitutional issues. And, in fact, the district court in the Meyer case did what you asked, Ms. Ruhtenberg, and granted the Motion to Suppress, and the Supreme Court overruled that district court. I'm not going to follow that path, frankly, counsel. I'm going to deny your Motion to Suppress, and that will be the Order of the Court.

MS. RUHTENBERG: Thank you, Your Honor.

MR. CLEVERLEY: Thank you, Your Honor.

(This matter concluded at 3:04 p.m.)





CERTIFICATE OF SHORTHAND REPORTER

I, Jackie D. Veatch, Certified Shorthand Reporter in and for the State of Iowa, do hereby certify that at the time and place as indicated on Page 1, I took in shorthand the testimony presented and later reduced to typewriting the foregoing typewritten pages and that said transcript is a true and accurate record of the notes so taken.

Dated this 27th day of September, 1996.

Jackie D. Veatch

JACKIE D. VEATCH, CSR, RPR

Transcript Ordered: September 12, 1996

Transcript Ordered By: Maria Ruhtenberg

Transcript Delivered: September 27, 1996

**IN THE SUPREME COURT OF IOWA**

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**SUPREME COURT NO. 96-1584**

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**STATE OF IOWA,**

**Plaintiff-Appellee,**

**vs.**

**PATRICK KNOWLES,**

**Defendant-Appellant.**

---

**APPEAL FROM THE IOWA DISTRICT COURT,**
**JASPER COUNTY**
**THE HONORABLE CAROL GRETA**
**AND THE HONORABLE JOHN CROUCH, JUDGES**

---

# APPELLANT'S BRIEF
# AND
# REQUEST FOR ORAL ARGUMENT

---

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

### I. THE SEARCH OF PATRICK KNOWLES'S VEHICLE BASED SOLELY ON ISSUANCE OF A ROUTINE TRAFFIC CITATION IS AN UNREASONABLE SEARCH REQUIRING SUPPRESSION OF EVIDENCE SUPPORTING HIS CONVICTION

**Cases**

*Adams v. State*, 634 S.W.2d 785, 798 (Tx. Ct. App. 1982)
*Berkemer v. McCarthy*, 468 U.S. 420, 437, 104 S. Ct. 3138, 3149, 82 L.Ed.2d 317 (1984)
*Castle v. State*, 476 N.E.2d 522, 524 (Ind. Ct. App. 1985)
*Chimel v. California*, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L.Ed.2d 685 (1969)
*City of Akron v. Volfve*, 662 N.E.2d 1152, 1154-55 (Ohio 1995)
*Commercial Exchange Bank v. McLeod*, 19 N.W. 329 (Iowa 1884)
*Commonwealth v. Flythe*, 417 A.2d 633, 634 (Pa. Super. Ct. 1979)
*Commonwealth v. Grosso*, 672 A.2d 792, 794 (Pa. Super. Ct. 1996)
*Commonwealth v. Hagan*, 464 S.W.2d 261, 264 (Ky. Ct. App. 1971)
*Commonwealth v. Lewis*, 275 A.2d 51, 52 (Pa. 1971)
*Conn v. Commonwealth*, 387 S.W.2d 285, 286 (Ky. Ct. App. 1965)
*Cupp v. Murphy*, 412 U.S. 291, 296, 93 S. Ct. 2000, 2004, 36 L.Ed.2d 900 (1973)
*Davis v. Mississippi*, 394 U.S. 721, 726-27, 89 S. Ct. 1394, 1397, 22 L.Ed.2d 676 (1969)
*Delaware v. Prouse*, 440 U.S. 648, 99 S. Ct. 1391, 59 L.Ed.2d 660 (1979)
*Florida v. Jimeno*, 500 U.S. 248, 250, 111 S. Ct. 1801, 1803, 114 L.Ed.2d 297 (1991)
*Gustafson v. Florida*, 414 U.S. 260, 265-66, 94 S. Ct. 488, 491-92, 38 L.Ed.2d 456 (1973)
*Hughes v. State*, 522 P.2d 1331, 1332 (Ok. Ct. App. 1974)
*Johns v. Commonwealth*, 394 S.W.2d 890, 892, (Ky. Ct. App. 1965)
*Johnson v. State*, 537 So. 2d 117, 119 (Fla. Ct. App. 1988)
*Lane v. Commonwealth*, 386 S.W.2d 743, 745 (Ky. Ct. App. 1965)
*Lawson v. State*, 484 P.2d 1337, 1339-40 (Ok. Ct. App. 1971)
*Linnett v. State*, 647 S.W.2d 672, 674-75 (Tx. Ct. App. 1983)
*New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981)
*People v. Aquino*, 500 N.Y.S.2d 677, 679 (N.Y. App. Div. 1986)
*People v. Bland*, 884 P.2d 312, 321 (Colo. 1994)
*People v. Corral*, 498 N.E.2d 287, 291 (Ill. Ct. App. 1986)
*People v. Guzman*, 551 N.Y.S.2d 709, 711 (N.Y. App. Div. 1990)
*People v. Harris*, 557 N.E.2d 1277, 1279 (Ill. Ct. App. 1990)
*People v. Hoffman*, 525 N.Y.S.2d 376, 378 (N.Y. App. Div. 1988)

*People v. Innis*, 604 N.E.2d 389, 392 (Ill. Ct. App. 1992)
*People v. Koutsakis*, 649 N.E.2d 605, 608 (Ill. Ct. App. 1995)
*People v. Lawrence*, 529 N.E.2d 63, 65 (Ill. Ct. App. 1988)
*People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988)
*People v. Owens*, 623 N.Y.S.2d 719, 721 (N.Y. App. Div. 1995)
*People v. Parham*, 382 N.W.2d 786, 787 (Mich. Ct. App. 1985)
*People v. Penny*, 544 N.E.2d 1015, 1017 (Ill. Ct. App. 1989)
*People v. Stewart*, 610 N.E.2d 197, 202 (Ill. Ct. App. 1993)
*People v. Sullivan*, 612 N.E.2d 1000, 1003 (Ill. Ct. App. 1993)
*People v. Trevino*, 140 Cal. Rptr. 243, 245 (App. Ct. 1977)
*People v. Young*, 438 N.Y.S.2d 850, 851 (N.Y. App. Div. 1981)
*Reifsnyder v. Lee*, 44 Iowa 101 (Iowa 1876)
*Ricci v. State*, 506 P.2d 601, 603 (Ok. Ct. App. 1973)
*State v. Braxton*, 368 S.E.2d 56, 57-59 (N.C. Ct. App. 1988)
*State v. Chapin*, 879 P.2d 300, 303 (Wash. Ct. App. 1992)
*State v. Cook*, 530 N.W.2d 728 (Iowa 1995)
*State v. Davis*, 477 So. 2d 504 (Ala. Ct. App. 1985)
*State v. Fisher*, 484 P.2d 864, 865 (Or. Ct. App. 1971)
*State v. Flores*, 685 P.2d 999, 1005 (Or. Ct. App. 1984)
*State v. Garcia*, 461 N.W.2d 460 (Iowa 1990)
*State v. Howard*, 509 N.W.2d 764 (Iowa 1993)
*State v. Ledbetter*, 540 P.2d 824, 826 (N.M. Ct. App. 1975)
*State v. Meyer*, 543 N.W.2d 876 (Iowa 1996)
*State v. Morgan*, 445 So. 2d 50, 52 (La. Ct. App. 1984)
*State v. Swanson*, 475 N.W.2d 148, 154-55 (Wis. 1991)
*Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)
*Thomas v. State*, 453 So. 2d 1075, 1077 (Ala. Ct. App. 1984)
*Trusty v. State*, 500 P.2d 1342, 1344 (Ok. Ct. App. 1972)
*United States v. Botera-Ospina*, 71 F.3d 783 (10th Cir. 1995)
*United States v. Morris*, 910 F. Supp. 1428, 1444 (N.D. Iowa 1995)
*United States v. Mota*, 982 F.2d 1384, 1386 (9th Cir. 1993)
*United States v. Parr*, 843 F.2d 1228, 1230-31 (9th Cir. 1988)
*United States v. Robinson*, 414 U.S. 218, 235, 94 S. Ct. 467, 477, 38 L.Ed.2d 427 (1973)
*United States v. Robinson*, 471 F.2d 1082 (D.C. Cir. 1972), *rev'd on other grounds*, 414 U.S. 218, 94 S. Ct. 467, 38 L.Ed.2d 426 (1973)
*United States v. Suarez*, 694 F. Supp. 926, 934 n.6 (S.D. Ga. 1988), *aff'd*, 855 F.2d 1574 (11th Cir. 1989)
*United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990)
*United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991)



*Weeks v. United States*, 232 U.S. 383, 392, 34 S. Ct. 341, 344, 58 L.Ed. 652 (1914)

**Statutes**
Iowa Code § 804.5 (1995)

**Miscellaneous**
U. S. Constitution, Fourth Amendment

## II. IOWA CODE SECTION 805.1(4) IS UNCONSTITUTIONAL TO THE EXTENT IT AUTHORIZES A SEARCH INCIDENT TO A TRAFFIC CITATION

**Cases**
*Almeida-Sanchez v. United States*, 413 U.S. 266, 272, 93 S. Ct. 2535, 2539, 37 L.Ed.2d 596 (1973)
*Reynolds v. Iowa Dept. of Human Serv.*, 493 N.W.2d 813, 815 (Iowa 1992)
*Sibron v. New York*, 392 U.S. 40, 60-61, 88 S. Ct. 1889, 1901-02 (1968)
*State v. Cook*, 530 N.W.2d 728 (Iowa 1995)
*State v. Meyer*, 543 N.W.2d 876 (Iowa 1996)

**Statutes**
Iowa Code § 805.1 (1995)
Iowa Code § 805.1(4) (1995)

## III. THE DETENTION OF PATRICK KNOWLES FOLLOWING THE ISSUANCE OF A CITATION WAS UNREASONABLE AND ANY EVIDENCE OBTAINED THEREFROM SHOULD HAVE BEEN SUPPRESSED.

**Cases**
*United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994)
*United States v. Sharpe*, 470 U.S. 675, 105 S. Ct. 1568, 84 L.Ed.2d 605 (1985)
*United States v. Williams*, 714 F.2d 777, 781 (8th Cir. 1983)

ORIGINAL

No. 97-7597

Supreme Court, U.S.
FILED
FEB 23 1998
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

**PATRICK KNOWLES, Petitioner,**

**vs.**

**STATE OF IOWA, Respondent.**

BRIEF IN OPPOSITION TO

PETITION FOR A WRIT OF CERTIORARI

TO THE IOWA SUPREME COURT

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## COUNTERSTATEMENT OF QUESTION PRESENTED

**WHERE A PEACE OFFICER OBSERVES A TRAFFIC VIOLATION AND IS STATUTORILY AUTHORIZED EITHER TO MAKE A CUSTODIAL ARREST OR TO ISSUE A "CITATION IN LIEU OF ARREST," MAY THE OFFICER, CONSISTENT WITH THE FOURTH AMENDMENT, ISSUE A CITATION AND SEARCH THE PASSENGER COMPARTMENT OF THE VEHICLE UNDER THE "SEARCH INCIDENT TO ARREST" DOCTRINE?**



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Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969) . . . . . 2

Gustafson v. Florida, 414 U.S. 260, 94 S. Ct. 488, 38 L. Ed. 2d 456 (1973) . . . . . 1

Maryland v. Wilson, 519 U.S. ___, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997) . . . . . 4

Ohio v. Robinette, 519 U.S. ___, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996) . . . . 5

Sibron v. New York, 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968) . . . . . 1

State v. Becker, 458 N.W.2d 604 (Iowa 1990) . . . . 2

State v. Doran, 563 N.W.2d 62 (Iowa 1997) . . . . 1,2

State v. Taylor, 808 P.2d 324 (Ariz. Ct. App. 1990), review denied, 821 P.2d 166 (Ariz. 1991), cert. denied, 503 U.S. 998, 112 S. Ct. 1705, 118 L. Ed. 2d 413 (1992) . . . . . 2,3,4

United States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973) . . . . . 1

Whren v. United States, 517 U.S. ___, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) . . . . 4

Statutes

A.R.S. § 13-3881(A) . . . . . 3

A.R.S. § 13-3903(A) . . . . . 3

A.R.S. § 13-3903(F) . . . . . 3




## OPINION BELOW and STATEMENT OF THE CASE

The facts are not disputed. Officer Cook of the Newton Police Department stopped petitioner for driving at an excessive speed. The officer issued petitioner a speeding citation and then searched the passenger compartment of his car.[1] Under the driver's seat he found two gloves, one containing marijuana and the other a "pot pipe." He then arrested petitioner for possession of marijuana.

The State charged petitioner with possession of marijuana and keeping a controlled substance in a motor vehicle. Petitioner sought to suppress the marijuana evidence, asserting that the search of his car violated his rights under the Fourth Amendment. At the suppression hearing the officer testified that he searched petitioner's car pursuant to his statutory authority to make a "search incident to citation." The district court denied the motion to suppress. Ruling; App. A6. Trial to the court followed and petitioner was found guilty as charged. Judgment; App. A8.

On appeal the Iowa Supreme Court, following its recent decision in State v. Doran, 563 N.W.2d 62 (Iowa 1997),

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[1]Petitioner's assertion that the officer "proceeded to thoroughly search both [petitioner's] person and the passenger compartment of his vehicle" (Petition at 2) is misleading. See Supp. Tr. 7-8; App. A18-A19. The officer apparently did not search petitioner's person until after the contraband was found in his car. See Supp. Tr. 7-8, 10-11; App. A18-A19, A21-A22.

affirmed the district court. State v. Knowles, ___ N.W.2d ___ (Iowa 1997); App. A1. The Court upheld the constitutionality of the Iowa statutory scheme which (1) authorizes peace officers to make custodial arrests for observed traffic violations, (2) authorizes issuance of a "citation in lieu of arrest", and (3) provides that issuance of a citation "does not affect the officer's authority to conduct an otherwise lawful search."[2]

In Doran, involving similar circumstances, the Iowa Supreme Court held that "[i]f the officer is legally permitted and objectively authorized to make the arrest, he is, for that reason alone, also authorized to make the search." 563 N.W.2d at 623. Furthermore, section 805.1(4), recognizing that an officer's authority to conduct a lawful search is not affected by issuance of a citation in lieu of arrest, does not extend the authority to search beyond that permitted by the Fourth Amendment. Id.

In Knowles, the court reaffirmed its holding in Doran. Slip op. at 3; App. A3. It explained:

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[2]See Iowa Code §§ 804.7(2), 805.1(1) and 805.1(4). Petitioner is challenging only the Iowa Supreme Court's interpretation of section 805.1(4), which provides:

> 4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for purposes of the speedy indictment requirements of R. Cr. P. Section 27, subsection 2, paragraph "A", Ia. Ct. Rules, 3rd ed.



> We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of the authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

Knowles, slip op. at 3-4; App. A3-A4.

## ARGUMENT

## REASONS FOR DENYING

## THE WRIT

### I. PETITIONER'S CLAIM PRESENTS NO IMPORTANT ISSUE OF FEDERAL LAW.

The case at bar involves the interpretation of a state statute under the Federal and Iowa Constitutions. The holding conforms to the point made in Sibron v. New York that if "probable cause to arrest" precedes a search, the search is valid:

> Of course, the fruits of a search may not be used to justify an arrest to which it is incident, but this means only that probable cause to arrest must precede the search. If the prosecution shows probable cause to arrest prior to a search of a man's person, it has met its total burden. There is no case in which a defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards."

Sibron v. New York, 392 U.S. 40, 77, 88 S. Ct. 1889, 1909, 20 L. Ed. 2d 917, 943 (1968) (Harlan, J., concurring), quoted in Doran, 563 N.W.2d at 622. Furthermore, the decision is consistent with this Court's holdings in Gustafson and Robinson, which emphasize the custodial nature of the arrest. See Gustafson v. Florida, 414 U.S. 260, 94 S. Ct. 488, 38 L. Ed. 2d 456 (1973); United States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973). That is, the act of stopping a driver on probable



cause to arrest and detaining that driver long enough to issue a citation has sufficient characteristics in common with a custodial arrest to justify a search for purposes of officer safety. Moreover, this concern for officer safety is a matter over which states have broad legislative discretion. See Doran at 623, citing Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685, 694 (1969), and State v. Becker, 458 N.W.2d 604, 607 (Iowa 1990).

Under these circumstances, although a question is presented under the Fourth Amendment of the Federal Constitution, it does not involve any novel or important concepts which have not been previously addressed and decided by this Court.

### II. THERE IS NO CONFLICT AMONG JURISDICTIONS.

Petitioner's claim that the ruling by the Iowa Supreme Court conflicts with other jurisdictions is unfounded. He cites only one case from a state, Arizona, which has a statutory scheme he claims is similar to Iowa's. Petition at 7-8. See State v. Taylor, 808 P.2d 324 (Ariz. Ct. App. 1990), review denied, 821 P.2d 166 (Ariz. 1991), cert. denied, 503 U.S. 998, 112 S. Ct. 1705, 118 L. Ed. 2d 413 (1992). However, Taylor is readily distinguishable.

First, the Arizona statutory scheme differs from Iowa's in that it allows police to "release from custody" a person who has been "arrested" for a minor offense. See A.R.S. § 13-3903(A).[3] It further provides:

> F. Nothing in this section shall be construed to affect a peace officer's authority to conduct an otherwise lawful search incident to his arrest even though such arrested person is released before being taken to the police station . . . .

A.R.S. § 13-3903(F) (emphasis added). This statutory scheme, unlike Iowa's, clearly requires a custodial arrest before a search may be made.

Second, the majority in Taylor does not interpret these statutes or apply them to the facts. In fact, it does not even mention any of them in its one-page opinion. See 808 P.2d at 324-25.

Third, the facts upon which the ruling is based are not clear. The majority recites that two police officers approached Taylor, intending to write him a citation for drinking beer in a city park. But rather than doing so, one of the officers searched him and found hashish in his

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[3]The subsection provides:

> A. In any case in which a person is arrested for an offense that is a misdemeanor or petty offense, the arresting officer may release the arrested person from custody in lieu of taking such person to the police station by use of the procedure prescribed in this section.

See also A.R.S. § 13-3881(A), which defines an "arrest" as involving "actual restraint of the person to be arrested" or "submission to the custody" of the officer.



billfold. Id. at 324. The court held that this search was unreasonable. Id. at 325. In contrast, the dissent asserted, "It is clear that under the facts of this case appellant was arrested and in custody when he was searched." Id. at 325 (Hathaway, J., dissenting). Given these considerations, Knowles does not conflict with Taylor.

The numerous other cases cited by petitioner, from both state and federal courts, are distinguishable in that none of them involves interpretation of a statutory scheme which authorizes, for the safety of the officer, a "search incident to citation." See Petition at 8-11.

## III. THE DECISION IN QUESTION WILL NOT LEAD TO ARBITRARY OR DISCRIMINATORY ENFORCEMENT.

Several recent rulings of this Court have discussed the perceived danger of arbitrary and discriminatory automobile stops and searches. Those rulings have consistently upheld searches by officers having probable cause to arrest. See Whren v. United States, 517 U.S. ___, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) (Court rejects argument that "the 'multitude of applicable traffic and equipment regulations' is so large and so difficult to obey perfectly that virtually everyone is guilty of violation, permitting police to single out almost whomever they wish for a stop"; "probable cause" or "reasonable suspicion" sufficiently constrains police from acting arbitrarily); Maryland v. Wilson, 519 U.S. ___, 117 S. Ct. 882, 137 L. Ed. 2d 41

(1997) (after lawful traffic stop, officer may order passenger to exit vehicle based on "weighty interest in officer safety"); Ohio v. Robinette, 519 U.S. ___, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996) (officer need not tell a lawfully stopped driver that he is free to leave before officer asks driver's consent to search vehicle). Based on these principles, petitioner's fear of arbitrary or discriminatory enforcement under Iowa law is unfounded.

**CONCLUSION**

Based on the above, the holding in Knowles presents no important federal question, does not conflict with the holdings of other courts, and will not lead to arbitrary or discriminatory enforcement. Accordingly, certiorari should be denied.

Respectfully submitted,

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*Counsel of Record*

**SUPREME COURT OF THE UNITED STATES**
**OCTOBER TERM, 1997**

**ON PETITION FOR WRIT OF CERTIORARI TO THE IOWA SUPREME COURT**

| | | |
|---|---|---|
| PATRICK KNOWLES, | ) | **No. 97-7597** |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| STATE OF IOWA, | ) | **APPEARANCE OF COUNSEL** |
| | ) | |
| Respondent. | ) | |

Paul Rosenberg, attorney at law, admitted to practice before this court, hereby enters his appearance as counsel of record for Petitioner Patrick Knowles.

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**PROOF OF SERVICE**

On the 5 day of February, 1998, I, the undersigned did serve an Appearance of Counsel on all other parties to this appeal by mailing one (1) copy thereof to the following counsel:

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Paul Rosenberg



**SUPREME COURT OF THE UNITED STATES**
**OCTOBER TERM, 1997**

**ON PETITION FOR WRIT OF CERTIORARI**
**TO THE IOWA SUPREME COURT**

| | | |
|---|---|---|
| PATRICK KNOWLES, | ) | **No. 97-7597** |
| Petitioner, | ) | |
| vs. | ) | |
| STATE OF IOWA, | ) | **NOTICE OF SUBSTITUTION OF COUNSEL FOR PETITIONER PATRICK KNOWLES** |
| Respondent. | ) | |

Paul Rosenberg, attorney at law, duly admitted to practice before this court, is hereby substituted as counsel for petitioner Patrick Knowles in the stead of attorney J. Keith Rigg.

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**PROOF OF SERVICE**

On the 5 day of February, 1998, I, the undersigned did serve a Notice of Substitution of Counsel for Petitioner Patrick Knowles on all other parties to this appeal by mailing one (1) copy thereof to the following counsel:

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Paul Rosenberg

Supreme Court, U.S.
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No. 97-7597

In The

# Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

*Petitioner,*

vs.

STATE OF IOWA,

*Respondent.*

**On Writ Of Certiorari To The Supreme Court Of Iowa**

## JOINT APPENDIX

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**Petition for Certiorari Filed January 20, 1998**
**Certiorari Granted March 23, 1998**

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## RELEVANT DOCKET ENTRIES

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### Iowa Supreme Court

| | |
|---|---|
| 10/22/97 | Decision |

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

State of Iowa,
Plaintiff,
vs.
Patrick George Knowles,
Defendant

AG-CR002757

TRIAL INFORMATION

(Filed May 2, 1996)

The undersigned, as a prosecuting attorney for Plaintiff affiliated with the office of the County Attorney of Jasper County, Iowa, in the name and by the authority of the State of Iowa, hereby accuses the above-named Defendant, Patrick George Knowles, of the crime of Prohibited Acts by a Registrant, Keeping a Controlled Substance to wit: Marijuana in a motor vehicle, An aggravated misdemeanor in violation of Iowa Code Section 124.402(1)(e) in that on or about March 9, 1996 as shown in the Minutes of Evidence/Minutes of Testimony and/or other writings or document(s) attached thereto and presented herewith and by this reference fully incorporated herein and at a location in whole or in part within Jasper County, Iowa, the Defendant, Patrick George Knowles, did unlawfully and willfully commit the aforesaid crime substantially as therein disclosed.

A TRUE INFORMATION:

/s/ Christine E. Branstad
Christine E. Branstad,
Prosecuting Attorney
Room 301
Jasper County Courthouse
Newton, Iowa 50208
Telephone: 515/792-5010
FAX: 515/792-8287



**List of Witnesses**

Officer Ronald Cook and/or Officer Dale Springer and/or Brad Van Zee and/or Marcia Morton and/or Bruce P. Reeve and/or any and all other persons named or otherwise mentioned or identified in the attachment(s) hereinabove referenced and/or incorporated herein.

Copy to:

Jasper County Attorney

Patrick George Knowles
509 W. Marion, Box 864, Monroe, Iowa 50170

Maria Ruhtenberg, 601 Locust Street, Suite 1022, Des Moines, Iowa 50309, Attorney for Patrick Knowles

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

State of Iowa,

Plaintiff,

vs.

Patrick George Knowles,

Defendant

SR-CR002758

TRIAL INFORMATION

(Filed
May 2, 1996)

The undersigned, as a prosecuting attorney for Plaintiff affiliated with the office of the County Attorney of Jasper County, Iowa, in the name and by the authority of the State of Iowa, hereby accuses the above-named Defendant, Patrick George Knowles, of the crime of Possession of a schedule I Controlled Substance to wit: Marijuana, A serious misdemeanor in violation of Iowa Code Section 124.401(3) in that on or about March 9, 1996 as shown in the Minutes of Evidence/Minutes of Testimony and/or other writings or document(s) attached thereto and presented herewith and by this reference fully incorporated herein and at a location in whole or in part within Jasper County, Iowa, the Defendant, Patrick George Knowles, did unlawfully and willfully commit the aforesaid crime substantially as therein disclosed.

A TRUE INFORMATION:

/s/ Christine E. Branstad
Christine E. Branstd,
Prosecuting Attorney
Room 301
Jasper County Courthouse
Newton, Iowa 50208
Telephone: 515/792-5010
FAX: 515/792-8237



**List of Witnesses**

Officer Ronald Cook and/or Officer Dale Springer and/or Brad Van Zee and/or Marcia Morton and/or Bruce P. Reeve and/or any and all other persons named or otherwise mentioned or identified in the attachment(s) hereinabove referenced and/or incorporated herein.

Copy to:

Jasper County Attorney

Patrick George Knowles
509 W. Marion, Box 864, Monroe, Iowa 50170

Maria Ruhtenberg, 601 Locust Street, Suite 1022, Des Moines, Iowa 50309, Attorney for Patrick Knowles

**IN THE IOWA DISTRICT COURT**
**FOR JASPER COUNTY**

| | | |
|---|---|---|
| **STATE OF IOWA,** | ) | **Criminal No. SRCR2758** |
| **Plaintiff,** | ) | **SRCR2757** |
| | ) | |
| **vs.** | ) | **DEFENDANT'S MOTION** |
| | ) | **TO SUPPRESS** |
| **PATRICK KNOWLES,** | ) | |
| | ) | |
| **Defendant.** | ) | |

The defendant, Patrick George Knowles, moves this Court to suppress evidence seized in violation of the United States Constitution and states the following in support:

1. On March 9, 1996, the defendant was stopped for speeding while driving in Newton, Iowa.

2. The officer issued the defendant a traffic citation for the speeding violation after determining that the defendant had a valid driver's license and no outstanding arrest warrants.

3. The officer then requested the defendant to exit the car, and the officer searched the defendant and his car.

4. During the search, the officer found what he believed to be marijuana under the driver's seat.

5. On May 2, 1996, a trial information was filed charging the defendant with Possession of a Schedule I Controlled Substance in violation of Iowa Code § 124.401(3) (Case No. CR 2758). On the same date,



another trial information was filed charging the defendant with Prohibited Acts by a Registrant, Keeping a Controlled Substance in violation of Iowa Code § 124.402(1)(3) (Case No. CR 2757). Both of these charges arose from the search of the defendant's car and the seizure of the marijuana.

6. The officer did not have probable cause to search the defendant's car, nor did he obtain a search warrant.

7. The officer stated in his report that the search was conducted "incident to citation."

8. No such exception to the warrant requirement exists under the Fourth Amendment to the Constitution.

9. Because the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional, and the marijuana seized during the search must be suppressed.

10. In addition, when the officer issued the citation to the defendant, the officer had effectuated the purpose of the stop, and the further detention to search was without probable cause and unreasonable and therefore unconstitutional under the Fourth Amendment.

WHEREFORE, the defendant respectfully requests this Court suppress the marijuana unconstitutionally seized from the defendant's car.

PAUL ROSENBERG &
ASSOCIATES, P.C.
601 Locust Street, Suite 1022
Des Moines, Iowa 50309
Telephone (515) 245-3828
Fax (515) 247-2207

By: /s/ Maria Ruhtenberg
Maria Ruhtenberg
(PK0014905)
ATTORNEY FOR DEFENDANT

---



IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA,<br>Plaintiff,<br>vs.<br>PATRICK GEORGE KNOWLES,<br>Defendant. | : | SR CR002757 & 2758<br>RESISTANCE TO DEFENDANT'S MOTION TO SUPPRESS |

COMES NOW the State of Iowa, by and through the undersigned and resists the defendant's Motion to Suppress.

WHEREFORE, the State of Iowa prays the Court enter an Order overruling the defendant's Motion to Suppress.

THE STATE OF IOWA

By: /s/ Christine Branstad
Christine Branstad, Assistant
Jasper County Attorney
301 Courthouse Building
Newton, Iowa 50208
Tel: 1-515-792-5010

COPY:

Jasper County Attorney

Maria Ruhtenberg
Attorney for defendant

---

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, Plaintiff, vs. PATRICK GEORGE KNOWLES, Defendant. | ) ) ) ) ) ) ) | CRIMINAL NOS. AGCR002757 SRCR002758 TRANSCRIPT OF PROCEEDINGS |

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[3] PROCEEDINGS

THE COURT: Madam reporter, this is in Cause Nos. SRCR002758 and AGCR002757. Both of them are entitled State of Iowa vs. Patrick George Knowles. Mr. Knowles does appear personally for the purpose of a Motion to Suppress Evidence with his attorney, is it pronounced Maria Ruhtenberg?

MS. RUHTENBERG: That's right, Your Honor.

THE COURT: And the State of Iowa is represented by Assistant Jasper County Attorney, James Cleverley, Jr. Mr. Cleverley, are you ready to proceed?

MR. CLEVERLEY: Yes, Your Honor.

THE COURT: Ms. Ruhtenberg, are you ready to proceed?



MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Will there be any evidence taken?

MR. CLEVERLEY: Yes, we would call Officer Cook.

THE COURT: And before you step up, Mr. Cook, will there be any witnesses on behalf of the defendant?

MS. RUHTENBERG: No, Your Honor. Officer Cook is the only one.

THE COURT: Officer Cook, why don't you come forward to be sworn.

[4] OFFICER RONALD J. COOK,

called as a witness by the State, being first duly sworn by the Court, was examined and testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CLEVERLEY:

Q. Could you please state your name.

A. Ronald J. Cook.

Q. How are you employed?

A. I'm a police officer with the City of Newton.

Q. How long have you been a police officer for the City of Newton?

A. Since November 1992.

Q. And on March 9th of 1996, were you employed as a police officer?

A. Yes, sir, I was.

Q. And you're a certified peace officer?

A. Yes, sir, I am.

Q. You have the authority to write and issue citations; is that correct?

A. Yes, sir, I do.

Q. Now, on March 9th of 1996, did you have an occasion to come into contact with a Mr. Patrick George Knowles?

A. Yes, sir, I did.

[5] Q. And where was that contact first made?

A. Would have been in the – approximately the 300 block of East 12th Street South.

Q. And what brought your attention to either Mr. Knowles or to the vehicle he was in?

A. I was going northbound on East 12th Street South from South Fifth Avenue when I observed a vehicle approaching at a high rate of speed going southbound on East 12th.

Q. And did you make a determination of the speed of the vehicle at that time?

A. Yes, sir, I had a good Doppler tone on the radar and a reading of 43.



Q. Prior to activating the radar, had you made any independent observation of your own as to what the speed of that vehicle might be?

A. Just that it was going in excess of 25 miles an hour.

Q. And so the radar readout showed 43, and this is a 25 mile an hour speed zone; is that correct?

A. Yes, sir.

Q. What did you do then after getting the radar reading?

A. I waited until the vehicle passed me, and I pulled into a drive to turn around to catch up to the [6] vehicle.

Q. And at the time that you observed this vehicle and made the radar clocking of it, did you know who was operating that vehicle?

A. No, sir.

Q. When did you discover who the operator of that vehicle was?

A. After I stopped the vehicle, I approached the driver, and he was identified, and I recognized him as Patrick Knowles.

Q. What was the purpose of stopping that vehicle?

A. For speeding.

Q. And did you know Mr. Patrick Knowles after you had stopped the vehicle?

A. Yes, sir.

Q. And prior to stopping the vehicle, what were your intentions to do?

A. Write a speeding citation.

Q. Did you indeed write one?

A. Yes, sir, I did.

Q. And what was that for?

A. 43 miles an hour in a 25 mile an hour zone.

Q. As a law enforcement officer, do you have the authority to arrest people and place them in jail for such a charge?

[7] A. Yes, I do.

Q. And did you choose to do that on this evening?

A. No, I opted to cite in lieu of arrest.

Q. And do you have a copy of that ticket or citation?

A. I don't personally, no.

Q. But you did issue a uniform Iowa citation; is that correct?

A. Yes, sir, that's correct.

Q. And Mr. Patrick Knowles was the driver of that vehicle?

A. Yes, sir, he was.

Q. Was he the sole passenger of the vehicle?



A. Yes, sir, he was.

Q. And are you familiar with Mr. Knowles?

A. Yes, sir, I am.

Q. How are you familiar with Mr. Knowles?

A. Through the drug task force.

Q. And what do you know about Mr. Knowles or what – yeah, what do you know about Mr. Knowles?

A. I know that he's had problems with paraphernalia and controlled substances in the past.

Q. And did you say anything to Mr. Knowles regarding the search of his vehicle?

A. I just told him that after I issued him a [8] citation that I had a right to search his person and his vehicle.

Q. Did you ask to search his vehicle?

A. No, sir, I did not.

Q. Did you just go ahead and search it incident to the citation?

A. Yes, sir.

Q. And did Mr. Knowles object to the search of his vehicle?

A. No, I don't believe that he did.

Q. At any time did he consent to the search of his vehicle?

A. No, sir, he did not.

Q. After searching that vehicle, what did you discover?

A. Underneath the driver's seat, I found two cotton gloves. One of them contained a bone, or antler, pot pipe. The other one contained two plastic baggies; one of which was empty, and one of which contained a green plant material.

Q. Why was it that you searched this vehicle?

A. Because I'd issued a citation.

Q. Was it also based on the fact of your prior knowledge of the type of behavior or criminal activity that Mr. Knowles had been involved in?

[9] A. Yes, sir.

Q. And all those events occurred in Jasper County, Iowa?

A. Yes, sir, they did.

Q. Is Mr. Knowles present here today?

A. Yes, sir, he's wearing a white T-shirt.

MR. CLEVERLEY: I have nothing further.

THE COURT: Cross-examination.

MS. RUHTENBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. RUHTENBERG:

Q. Officer Cook, after you stopped Mr. Knowles for speeding, did you run a check on his license?



A. Yes, ma'am, I did.

Q. Okay. Did you obtain a license and registration from Mr. Knowles?

A. I obtained his license. I don't believe I took his registration.

Q. And after you took his license, what did you do?

A. I went back to my vehicle to start writing out a summons, and I also did the check through the computer system on his driver's license.

Q. What did you discover through that check on his driver's license?

A. That he had a valid driver's license, and he had [10] no outstanding warrants – arrest warrants.

Q. What did you do after that?

A. I issued – I wrote up the citation and waited for Officer Springer to come to my location to assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation.

Q. Did you have any other suspicion that he was at that moment involved in any drug activity?

A. Other than my past knowledge of Mr. Knowles, no.

Q. Anything you observed lead you to believe or give you probable cause to believe that he was involved in criminal activity?

A. Not on this date, no.

Q. Was it your feeling that your knowledge of his past problems or your past knowledge of Mr. Knowles, did that give you probable cause to search his vehicle?

A. No, the speeding gave me probable cause to search the vehicle.

Q. And that's what you were thinking at the time of the stop?

A. Yes, ma'am.

Q. Did you physically hand the citation to Mr. Knowles prior to stopping him – I mean, prior to asking him to exit the car?

[11] A. I don't know if I handed it to him before he got out of the car or after he was standing outside the car.

Q. Was the search of his vehicle and of his person conducted after he received the copy of the citation?

A. Yes, ma'am.

Q. You did stop him for speeding?

A. Yes, ma'am.

Q. At that point when you issue a citation to a person after speeding, have you effectuated the purpose of your stop?

A. Have I finished my stop?

Q. Yes.

A. Yes, ma'am.

Q. Did you need, at that point, to obtain any further evidence of speeding?



A. Not of speeding, no.

Q. It was your understanding that simply because you had issued him a citation that that gave you the right – without any further probable cause gave you the right to search him and his vehicle?

A. Yes, ma'am.

MS. RUHTENBERG: Okay. I don't have any further questions. Thanks.

THE COURT: Redirect.

MR. CLEVERLEY: Nothing, thank you.

* * *

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, | : | Nos. AGCR2757, SRCR2758 |
| Plaintiff, | : | |
| vs. | : | RULING ON MOTION TO SUPPRESS |
| PATRICK GEORGE KNOWLES, | : | |
| Defendant. | : | |

This matter came on for hearing before the Court on the Defendant's motion to suppress evidence. The Defendant appeared personally with his attorney, Maria Ruhtenberg. The State was represented by Assistant Jasper County Attorney, James Cleverley.

Testimony was taken from one witness, Newton Police Officer Ron Cook, who issued a citation in lieu of arrest to the Defendant for speeding. The facts are undisputed. Officer Cook stopped the Defendant's motor vehicle early in the evening of March 9, 1996. After issuing the speeding citation, Officer Cook searched the Defendant's vehicle incident to the citation and found a quantity of marijuana in the vehicle.

The sole purpose of the stop was to issue a speeding citation. After ascertaining the identity of the Defendant, who was the sole occupant of the motor vehicle, Officer Cook stated that he recognized the Defendant as having prior involvement with possession of controlled substances and drug paraphernalia. However, Officer Cook also testified that he observed nothing in the course of the stop that make [sic] him suspicious of the Defendant or his activities. Therefore, both parties agree that justification



of the search in question must succeed or fail solely as a search incident to the issuance of the speeding citation.

The Defendant concedes that the Iowa Supreme Court has on two occasions ruled that a search incident to a citation is tantamount to a search incident to an arrest. *State v. Cook*, 530 N.W.2d 728 (Iowa 1995); *State v. Meyer*, 543 N.W.2d 876 (Iowa 1996). In both cases the high court reasoned that because the officer could have arrested the defendant under Iowa law instead of issuing a citation and could have conducted a search incident to such arrest, then the officer could search incident to a citation.

The Defendant argues that the supreme court did not consider in either *Cook* or *Meyer* the constitutional implications of Iowa Code §805.1(4) (1995), which states that "[t]he issuance of a citation in lieu of arrest . . . does not affected the officer's authority to conduct an otherwise lawful search." However, in both of those cases, the court stated that its review was de novo because constitutional issues were at stake, indicating that the supreme court was well aware of the tension created by the statute vis-a-vis the fourth amendment.

This Court, having no basis on which to grant the Defendant's motion to suppress, DENIES the same.

/s/ Carol Greta
Judge, 5th Judicial District

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, | : | |
| | : | Nos. AGCR 2757 |
| Plaintiff, | : | AGCR 2758 |
| vs. | : | |
| | : | |
| PATRICK KNOWLES, | : | Transcript of Evidence |
| | : | |
| Defendant. | : | |

* * *

[22] PROCEEDINGS

(The hearing commenced at 1:28 p.m. on July 10, 1996.)

THE COURT: Patrick George Knowles. Is this pretrial?

MS. RUHTENBERG: Yes, Your Honor. We're going to stipulate to the minutes and stipulate trial and have sentencing set for later.

THE COURT: Okay. Miss Ruhtenberg, my understanding is you're allowing the Court to make a finding at this time?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: In both cases?

MS. RUHTENBERG: Yes.

THE COURT: One is prohibited acts by registrant. I take it that's to have marijuana in a – maijuana [sic] in a vehicle registered to the owner, and the other is possession; right?



MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Does your client understand what we're doing?

MS. RUHTENBERG: Yes.

THE COURT: He's waiving his right to trial and all of that?

MS. RUHTENBERG: Yes.

[23] THE COURT: To confront the witnesses and those things?

MS. RUHTENBERG: Yes.

THE COURT: You've told him aobut [sic] all of that?

MS. RUHTENBERG: Yes.

THE COURT: Okay. The Court makes a finding of guilty as charged based upon – I can use the whole record; right?

MS. RUHTENBERG: Yes.

THE COURT: Meaning everything that's docketed including the officer's preliminary report?

MS. RUHTENBERG: Right.

THE COURT: Okay. Court makes a finding of guilty as charged. Sentencing is set for when – Do you want me to be the sentencing judge, or does it make any difference – because on the 30th, which would be your – the 31st I will be gone.

MS. BRANSTAD: Your Honor, Mr. Knowles is waiting sentencing on a felony charge. We'd ask that sentencing be set on that same date.

THE COURT: What date is that?

MS. BRANSTAD: It's the 24th –

MS. RUHTENBERG: Well, I have a plea date on the 24th.

MS. BRANSTAD: The 24th would be sentencing.

[24] MS. RUHTENBERG: I thought it was the 24th.

THE COURT: He's pleading on a felony?

MS. RUHTENBERG: Yes.

THE COURT: They're going to have to do a presentence investigation. We're going way into six weeks after that, aren't we, at least? It's going to take six weeks, isn't is [sic], Miss Branstad?

MS. BRANSTAD: Yes, it does. Probably looking at September.

THE COURT: Give me a date.

MS. BRANSTAD: Your Honor, we'd ask that this be set for the 29th at which time it can be continued to the same time as the other case for – sentencing can be done at that time.

MS. RUHTENBERG: Defendant's in agreement with that.



THE COURT: Sentencing for now set – You're talking about the 29th of this month?

MS. BRANSTAD: Yes, Your Honor. Set for 9:30 if that would be agreeable with the Court.

THE COURT: I think she said that's all right, did you not, Miss Ruhtenberg?

MS. RUHTENBERG: That's fine, Your Honor.

THE COURT: Is there anything else for this file or – or either one of those files?

[25] MS. RUHTENBERG: No, Your Honor.

(The hearing was complete at 1:31 p.m.)

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IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, | : | AG CR002757 |
| Plaintiff, | : | JUDGMENT ENTRY |
| vs. | : | |
| PATRICK GEORGE KNOWLES, | : | (Filed Sep. 10, 1996) |
| Defendant. | : | |

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of prohibited acts by a registratnt [sic], keeping a controlled substance, to wit: marijuana in a motor vehicle in violation of Section 124.401(1)(e), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $500.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002758, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.



Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

/s/ Richard Morr
Judge, Fifth Judicial District
of Iowa

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

| | | |
|---|---|---|
| STATE OF IOWA, | : | SR CR002758 |
| Plaintiff, | : | JUDGMENT ENTRY |
| vs. | : | |
| PATRICK GEORGE KNOWLES, | : | (Filed Sep. 10, 1996) |
| Defendant. | : | |

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of possession of a Schedule I Controlled Substance, to wit: marijuana in violation of Section 124.401(3), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $250.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002757, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.



Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

/s/ Richard Morr
Judge, Fifth Judicial District
of Iowa

**IN THE SUPREME COURT OF IOWA**

No. 235/96-1584

Filed October 22, 1997

STATE OF IOWA,

Appellee,

vs.

PATRICK KNOWLES,

Appellant.

---

Appeal from the Iowa District Court for Jasper County, Carol Greta and John P. Crouch, District Associate Judges.

Defendant convicted of possession of a controlled substance and keeping a controlled substance in an automobile appeals, challenging evidentiary rulings allowing evidence of marijuana obtained by a search of his person and automobile incident to the issuance of a traffic citation. **AFFIRMED**.

Maria Ruhtenberg of Paul Rosenberg & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and James Cleverley, Jr., Assistant County Attorney, for appellee.

Considered en banc.



CARTER, Justice.

Defendant, Patrick Knowles, was convicted of possession of a Schedule I controlled substance (marijuana) in violation of Iowa Code section 124.401(3) (1995) and keeping a controlled substance in an automobile in violation of Iowa Code section 124.402(1)(e). He appeals and challenges evidentiary rulings that allowed evidence of marijuana that had been obtained by a search of his person and automobile incident to the issuance of a traffic citation. Defendant divides his grounds for reversal into four contentions: (1) the lack of probable cause to search under the Fourth Amendment to the federal constitution, (2) the invalidity of a purported statutory grant of authority to search based on the issuance of a traffic citation, (3) the invalidity of a purported authorization for custodial arrest for a speeding violation under the seizure restrictions of the Fourth Amendment to the federal constitution, and (4) that it was unreasonable to detain the defendant after the issuance of the citation had been completed. Because we find the controlling issues of law have been determined adversely to defendant in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we affirm the judgment of the district court.

We need not consider defendant's first contention as existing separate and distinct from the second. The State does not contend that there was probable cause to search under the warrant standards of the Fourth Amendment. Defendant was stopped by police for driving at an excessive speed. There were no circumstances indicating that evidence of crime existed on his person or in his automobile. The officer's election to search his person and his car was based solely on the perceived authority to search

conferred by Iowa Code section 805.1(4). We thus proceed to the consideration of defendant's contention that this statute is unconstitutional.

We have consistently interpreted section 805.1(4) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. *State v. Meyer,* 543 N.W.2d 876, 879 (Iowa 1996); *State v. Becker,* 458 N.W.2d 604, 607 (Iowa 1990). Defendant does not contest the fact that he was speeding or that there was a statutory basis for arrest. *See* Iowa Code § 804.7. In *Doran* we upheld the authority to search conferred by section 805.1(4) in the face of challenges based on the Fourth Amendment and article I, section 8 of the Iowa Constitution.

Defendant urges us to reconsider our *Doran* holding. He asserts that, because the "search incident to an arrest" exception to the Fourth Amendment is the only constitutional predicate on which the State seeks to support the authority to search his person and automobile, there must have in fact been a custodial arrest to satisfy the limitations on searches imposed by the Fourth Amendment. He urges that our holding in *Doran* that the constitutional basis for the "search incident to an arrest" exception is satisfied by the presence of grounds for arrest rather than the making of a custodial arrest is misguided. We disagree. The suggestion that the constitutional basis for the "search incident to an arrest" exception is an actual arrest is belied by those decisions that hold that the timing of the arrest need not precede the search. *See State v. Peterson,* 515 N.W.2d 23, 25 (Iowa 1994); *State v. Beatty,* 305 N.W.2d 496, 498 (Iowa 1981). And, when the search produces an independent ground for an arrest on a more



serious charge, the foregoing of an arrest for the traffic violation does not defeat the authority to search. *See People v. Rossi,* 102 Ill. App. 3d 1069, 1073, 430 N.E.2d 233, 236 (1981).

We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of the authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

Defendant's third point, which suggests that the statutory authorization for a custodial arrest on a speeding charge is an unlawful authorization of an illegal seizure of the person under the Fourth Amendment, was not raised in the motion to suppress before the district court and thus may not be considered by us. His argument that he was unreasonably detained following the issuance of the citation must be rejected because the further detention was for purposes of making a search that has now been determined to be lawful. We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

**AFFIRMED.**

All justices concur except Neuman, Lavorato, Snell, and Ternus, JJ., who dissent.

---

**NEUMAN**, Justice (dissenting).

For the reasons expressed in my dissent to *State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997) (Neuman, J., dissenting), I cannot join the majority opinion. The constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract. The validity of such a search is "pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59, 88 S. Ct. 1889, 1901, 20 L. Ed. 2d 917, 932 (1968). The United States Supreme Court has never departed from this principle and neither, I respectfully suggest, should we.

---



**Supreme Court of the United States**

No. 97-7597

Patrick Knowles,

Petitioner

v.

Iowa

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Iowa.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 23, 1998

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(5)

Supreme Court, U.S.
FILED
MAY 29 1998
CLERK

No. 97-7597

In The

# Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

*Petitioner,*

vs.

STATE OF IOWA,

*Respondent.*

On Writ Of Certiorari To
The Supreme Court Of Iowa

## PETITIONER'S BRIEF

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## QUESTION PRESENTED

Can a state, consistent with the Fourth Amendment, confer to police officers a blanket authorization to conduct a full-blown search of a motor vehicle upon issuance of a traffic citation?

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## OPINION BELOW

The opinion of the Iowa Supreme Court (App. pp. 30-34) is officially reported at 569 N.W.2d 601. The district court's ruling and judgments (App. pp. 20-21, 26-29) are not reported.

## JURISDICTION

The Iowa Supreme Court entered its judgment on October 22, 1997. The petition for writ of certiorari was filed on January 20, 1998, and was granted on March 23, 1998. Jurisdiction of this Court is conferred by 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

### Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Iowa Code section 805.1(1) (1997)

Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest

without a warrant, or if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

**Iowa Code section 805.1(4) (1997)**

The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search.

## STATEMENT OF THE CASE

### A. Facts

On March 9, 1996, Patrick Knowles was operating his motor vehicle in the city of Newton, Iowa, and was pulled over for speeding. (App. pp. 12-13). The police officer approached Knowles's car, requested his license, and returned to his patrol car. (App. pp. 16-17). The officer checked the license and determined his license was valid, and there were no warrants for his arrest. (App. p. 17). After issuing a speeding citation, the officer detained Knowles and proceeded to conduct a thorough search of his person and the passenger compartment of his vehicle. (App. pp. 15-16, 17-18). The officer located marijuana and a pipe, and he then arrested Knowles. (App. p. 16).

The State charged Knowles with the offenses of possession of marijuana and keeping marijuana in a motor vehicle. (App. pp. 2-5). Knowles filed a motion to suppress under the Fourth Amendment to the United States



Constitution, challenging the search and admissibility of the marijuana and pipe. (App. pp. 6-8).

At the evidentiary hearing, the arresting officer testified that he had no probable cause or suspicion that Knowles was involved in any criminal activity, nor did he consent to the search of his person or his automobile. (App. pp. 15, 17-19). The officer gave the following justification for his actions: "I wrote up the citation and waited for Officer Springer to come and assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation." (App. p. 17). Following the hearing, the court denied the motion to suppress. (App. pp. 20-21).

The court found Knowles guilty on both offenses and sentenced him to concurrent terms of 90 days imprisonment on each charge. (App. pp. 26-29).

### B. Search Incident to Citation Statute

In 1983, the State of Iowa enacted a statute which preserved the authority to conduct a "search incident to arrest" in those circumstances where police elect to forego making a custodial arrest and instead issue a citation. Iowa Code section 805.1(4) reads in pertinent part:

> The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search.

Twelve years later, the Iowa Supreme Court, in a ruling specifically reserving the issue of the constitutionality of the legislation, held: "The Iowa legislature has thus created a search incident to citation exception to the search warrant requirement." *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995). Then, in a 5 to 4 decision, the Iowa Supreme Court found the search reasonable under the Fourth Amendment. *State v. Knowles*, 569 N.W.2d 601, 602 (Iowa 1997); *see also State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997).

## SUMMARY OF THE ARGUMENT

Iowa's law authorizing police to search incident to issuance of a citation violates Fourth Amendment protections because it purports to allow a full blown search without probable cause, or even reasonable suspicion. The requirement of probable cause is a fundamental component of the Fourth Amendment, which this Court has consistently enforced. The English and common law antecedent to the Bill of Rights reinforce this requirement.

Furthermore, because the Iowa law does not require a custodial arrest as a prerequisite to the search, the suspicionless intrusion does not fall within the search incident to arrest doctrine. This doctrine has not been, and should not be, extended to allow a full blown search upon the extremely common occurrence of momentarily detaining a citizen to issue a citation.

With the exception of Iowa, all jurisdictions that have addressed this issue have held that such a search is unreasonable, and this brief encounter between a police



officer and a citizen is not the functional equivalent of an arrest so as to authorize a suspicionless search.

Given the large number of citable regulatory offenses and the number of otherwise law abiding citizens who run afoul of these laws, the authority to search incident to citation would be a frightening expansion of police power. There are no public safety considerations that justify abandoning historical protections from such arbitrary government searches. The potential for abusing such a power is as threatening today as it was hundreds of years ago when frequent government abuses prompted enactment of citizen protections in the first place.

The search of Patrick Knowles's motor vehicle under Iowa's search incident to citation law was unreasonable. A state statute may not authorize a search forbidden by the Fourth Amendment and the contraband uncovered and seized must be suppressed as evidence.

## ARGUMENT

### I. THE SEARCH INCIDENT TO CITATION IS UNREASONABLE UNDER ESTABLISHED FOURTH AMENDMENT JURISPRUDENCE

#### A. Introduction

With rare exception, this Court has required probable cause, or at least reasonable suspicion, before police may conduct a search. One departure from this requirement is a search incident to arrest.

Under this exception, police may search an automobile upon the arrest of its driver without any independent suspicion. The arrest supplies the entire justification for the search and dispenses with the need for a warrant or probable cause.

The doctrine, however, requires a custodial arrest. Without such an arrest, a citizen's motor vehicle is entitled to Fourth Amendment protection, and a search can be carried out only upon probable cause.

Long settled Fourth Amendment principles establish that the search of Patrick Knowles's vehicle, without either probable cause or a custodial arrest, was unlawful.

### B. A Search Conducted Without Probable Cause Violates the Fourth Amendment

Seventy years ago, this Court first discussed the Fourth Amendment's probable cause requirement and its historical roots in colonial America and England. *Henry v. United States*, 361 U.S. 98, 100-01 (1928). The governmental abuses associated with general warrants and writs of assistance prompted the framers of the Constitution to require probable cause as a prerequisite to issuance of a warrant to arrest or search. *Id.* at 102-03; Barbara C. Salken, *The General Warrant of the Twentieth Century? A Fourth Amendment Solution to Unchecked Discretion to Arrest for Traffic Offenses*, 62 Temp. L. Rev. 221, 254-56 (1989); Joseph D. Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates*, 17 U. Mich. J.L. Ref. 465, 478-95 (1984); Jack K. Weber, *The Birth of Probable Cause*, 11 Anglo-Am. L. Rev. 155 (1982).



Throughout this century, this Court has continually emphasized the probable cause requirement with respect to warrantless arrests and searches.[1] Under the Fourth Amendment, it is imperative that a search and seizure without a warrant be made upon existing probable cause or it is unreasonable and unlawfully made. *Brinegar v. United States*, 338 U.S. 160, 164 (1949). "[S]ome quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure." *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-61 (1976). "Ordinarily, a search – even one that may permissibly be carried out without a warrant – must be based upon 'probable cause' to believe that a violation of the law has occurred." *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985).

In a narrow class of circumstances, this Court has found searches reasonable without antecedent probable cause. For example, police officers may conduct a protective pat-down upon existence of the less stringent "reasonable suspicion" standard. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). The government can perform administrative regulatory inspections without individualized suspicion of violations of the law. *Camara v. Municipal Court*, 387 U.S. 523, 538-39 (1967). Police officers may, without probable cause, perform an inventory search of an impounded automobile. *South Dakota v. Opperman*, 428 U.S. 364, 367-69 (1976). Officers can also search a person and his

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[1] Although the text of the Fourth Amendment requires probable cause only for the issuance of judicial warrants, the same quantum of suspicion is necessary to justify warrantless searches and seizures because to require less would frustrate the amendment's preference for judicial oversight. *Wong Sun v. United States*, 371 U.S. 471, 479 (1963).

immediate vicinity incident to a lawful custodial arrest without further justification. *Chimel v. California*, 395 U.S. 752, 763 (1969); *Weeks v. United States*, 232 U.S. 383, 392 (1914).

In a recent line of authority, this Court has refined the requisite Fourth Amendment justification for dispensing with individualized suspicion by requiring a showing of "special needs, beyond the normal need for law enforcement." *Chandler v. Miller*, 117 S. Ct. 1295, 1301 (1997); *Vernonia School Dist. 47J v. Acton*, 115 S. Ct. 2386, 2391 (1995); *Treasury Employees v. Von Raab*, 489 U.S. 656, 665-66 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989).

As discussed in Part II, "special needs" are lacking. Therefore, established Fourth Amendment principles on search incident to arrest and probable cause are sufficient to establish that the search of Knowles's vehicle was unreasonable.

### C. The Search Incident to Arrest Exception Requires a Custodial Arrest

#### 1. The Search Incident to Arrest Exception

The authority of police officers to search incident to a lawful arrest in order to uncover fruits of the crime has been long established in both English and American law. *Weeks v. United States*, 232 U.S. 383, 392 (1914). Under this exception, an officer may search a person incident to a custodial arrest. *United States v. Robinson*, 414 U.S. 218, 235 (1973); *Gustafson v. Florida*, 414 U.S. 260, 265-66 (1973). "In the case of a lawful *custodial* arrest a full search of the



person is not only an exception to the warrant requirement of the Fourth Amendment, but it is also a 'reasonable' search under that Amendment." *Robinson*, 414 U.S. at 235 (emphasis added).

The crux of the *Robinson* opinion is that it is the fact of the custodial arrest that gives the officer the authority to search the defendant. *Id.* at 234-35. *Robinson* does not require further determination of probable cause once the person is placed in custody. *Id.* at 236. The *Gustafson* Court outlined the determinative factors in a search incident to arrest: The officer had probable cause to arrest, he effectuated the arrest, and he placed the defendant in custody. *Gustafson*, 414 U.S. at 265.

The justifications for creating this exception are twofold: (1) To disarm the suspect in order to take him into custody without threatening the safety of the officer; and (2) to preserve evidence for later use at trial. *Robinson*, 414 U.S. at 234. For these reasons, all custodial arrests are treated alike without the necessity of further determination of probable cause to search. *Id.* at 235.

An officer who places a person under lawful custodial arrest may also search the area within the arrestee's immediate control. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). The scope of a search incident to a custodial arrest of a motorist extends to the entire passenger compartment of the automobile, including any containers therein. *New York v. Belton*, 453 U.S. 454, 460 (1981). The holdings of *Robinson*, *Gustafson*, *Chimel*, and *Belton* all presuppose a full custodial arrest to justify the ensuing search.

### 2. *Robinson* Does Not Apply Without Custodial Arrest

The brief detention necessary to issue a traffic citation is not the functional equivalent of an arrest. The *Robinson* Court tacitly distinguished between a search incident to a custodial arrest and a search incident to a routine traffic stop by specifically declining to address the issue of whether a search would be permitted where there was only a routine traffic stop and not a full custodial arrest. *Robinson*, 414 U.S. at 235 n.6.

Again, in *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984), this Court stated that "the usual traffic stop is more analogous to a so-called *Terry*-stop than to a formal arrest," and, therefore, a person detained for a traffic stop is not in custody for purposes of *Miranda*. *Id.* at 439-40. The "detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of detentions last only a few minutes." *Id.* at 437. A motorist expects to be detained only temporarily while the officer checks the license and registration and issues a citation. *Id.*

Similarly, the intrusion at motor vehicle checkpoints near the border to enforce immigration laws are "quite limited" under the Fourth Amendment. *United States v. Martinez-Fuerte*, 428 U.S. 543, 557-58 (1976). Again, in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 451-52 (1990), this Court found only a "slight" Fourth Amendment intrusion in the brief detention of motorists at a sobriety checkpoint.

"Where there is no formal arrest . . . a person might well be less hostile to the police and less likely to take



conspicuous, immediate steps to destroy incriminating evidence. . . . " *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). Therefore, a full *Chimel* search is not justified without a formal arrest. *Id.*

The federal circuit court in *Robinson* discussed the difference between a routine traffic stop and a custodial arrest. *United States v. Robinson*, 471 F.2d 1082, 1096-97 (D.C. Cir. 1972), *reversed on other grounds*, 414 U.S. 218 (1973). First, the court noted that the dangers to a police officer in a routine traffic stop are similar to and no greater than the threat involved in *Terry v. Ohio*. *Id.* at 1096. This is because the traffic stop is a brief encounter, and the vast majority of those stopped are law abiding citizens. *Id.* There is always a possibility of violence, but the mere possibility of danger to the officer is not enough to justify any type of search, including a *Terry* pat-down. *Id.*

This Court agreed with the lower court that a custodial arrest typically presents a greater degree of danger to the police officer than an investigatory stop:

> It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

*Robinson*, 414 U.S. at 234-35.

A traffic stop is certainly different from a full custodial arrest. The Iowa Supreme Court has equated the two

for purposes of a search with virtually no constitutional justification. The *Robinson* Court explained that the justification behind the search incident to arrest exception rests equally on the need to disarm a suspect as the need to preserve evidence to be used at trial. *Id.* at 234. The issuance of a citation, however, does not present the same concerns which support the search incident to arrest.

One who is arrested may be likely to try to escape to avoid prosecution. In addition, the officer will be exposed to the person for an extended period of time at the scene and in route to the police station. The danger to the officer in these circumstances is greater than when the officer only briefly detains a motorist for a traffic infraction. The motorist would be less likely to use violence against the officer if he knows he will be on his way once the citation is issued.

In addition, when an arrest is made, the person is more likely to attempt to destroy evidence, again, hoping to avoid prosecution that is certain once he has been placed in custody. There is no evidence a motorist could destroy to avoid prosecution for speeding.

The concerns that justify the bright-line search incident to arrest exception do not exist when there is no arrest. Iowa's extension of this exception to the warrant requirement endorses an unconstitutional warrantless search.

Although this issue remains undecided in this Court, numerous state and federal courts have interpreted the search incident to arrest exception to require a custodial



arrest.[2] For instance, according to the Ninth Circuit, a police officer cannot search a person incident to an arrest unless the officer places him in custody. *United States v. Mota*, 982 F.2d 1384, 1386 (9th Cir. 1993); *United States v. Parr*, 843 F.2d 1228, 1230 (9th Cir. 1988). In Wisconsin, an officer cannot conduct a search incident to arrest unless the person has actually been arrested and placed in custody. *State v. Swanson*, 475 N.W.2d 148, 155 (Wis. 1991). It is not sufficient that he had probable cause to arrest but in fact did not make an arrest. *Id.* The Colorado Supreme Court has held that *Robinson* and *Gustafson* require a custodial arrest in order to search, and a temporary detention does not constitute a custodial arrest. *People v. Bland*, 884 P.2d 312, 317 (Colo. 1994). Citing *Robinson*, a Maryland court has determined the search incident to arrest exception encompasses only in-custody arrests. *Dougherty v. State*, 392 A.2d 1165, 1167 (Md. Spec. App. 1978).

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[2] *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (stop for speeding is more like a *Terry* stop than a custodial arrest); *State v. Davis*, 477 So. 2d 504, 506 (Ala. Ct. App. 1985) (without a lawful custodial arrest, no authority for a full search under the search incident to arrest exception); *Thomas v. State*, 453 So. 2d 1075, 1077 (Ala. Ct. App. 1984) ("search-incident-to-arrest exception to the warrant requirement arises only when there is a custodial arrest"); *People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988) (police officer may not search when only a summons is issued); *State v. Ledbetter*, 540 P.2d 824, 826 (N.M. Ct. App. 1975) (where driver was not taken into custody for the driving violation, *Robinson* not applicable, and the search cannot be justified by the search incident to arrest exception); *Linnett v. State*, 647 S.W.2d 672, 674-75 (Tex. Ct. App. 1983) (*Belton* not applicable unless there is a custodial arrest).

Arizona's code allows an officer to release an arrested person from custody in lieu of taking him to the police station. Ariz. Rev. Stat. § 13-3903(A) (1989). The statute also states that such a release on citation does not limit the officer's authority to search. *Id.* § 13-3903(F). The Arizona Court of Appeals held that police officers must take a person into custody before he can search incident to an arrest. *State v. Taylor*, 808 P.2d 324, 324-25 (Ariz. Ct. App. 1990), *rev. denied*, 821 P.2d 166 (Ariz. 1991), *cert. denied*, 503 U.S. 998 (1992).

The American Bar Association (ABA) issued standards on statutes which allow a police officer to issue a citation in lieu of arrest. ABA Standard 10-2.3 (1986) states that the officer who has probable cause to arrest may issue a citation in lieu of arrest or continued custody. In addition, ABA Standard 10-2.4, which is similar to Iowa's statute, states, "Nothing in these standards should be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search even though a citation is issued." ABA Standard § 10-2.4 (1986) (History of Standard). The ABA changed the standard to read as follows: "When an officer makes a lawful arrest, the defendant's subsequent release on citation should not affect the lawfulness of any search incident to the arrest." *Id.* The ABA changed the standard because the original draft could mistakenly be interpreted to allow a search when the defendant is given only a citation and not placed under arrest. *Id.* (citing *Robinson*, 414 U.S. at 235).

In this case, Knowles was not under arrest. He had been stopped for speeding, and the officer had already written and issued the citation when he conducted the



search. (App. p. 17). The officer testified at the suppression hearing that he "opted to cite in lieu of arrest." (App. p. 14). This citation was issued pursuant to the Iowa statute allowing the officer to issue a citation *in lieu* of arrest. Iowa Code § 805.1 (1997). In Iowa, an arrest is "the taking of a person into custody." *Id.* § 804.5. There is no question that Knowles was not under custodial arrest at the time of the vehicle search. The search, therefore, cannot be justified as a search incident to arrest. Therefore, since the search does not fall under any exception to the warrant requirement, Fourth Amendment jurisprudence dictates that the officer must have had probable cause to search the vehicle.

### D. Probable Cause is Required to Search in Absence of a Custodial Arrest

Automobiles are effects under the Fourth Amendment and are protected against unreasonable searches and seizures. *United States v. Chadwick*, 433 U.S. 1, 10 (1977). When a state enacts a law designed to assist law enforcement, it may not authorize police conduct that violates the Fourth Amendment. *Sibron v. New York*, 392 U.S. 40, 61 (1968). The Fourth Amendment forbids any search that is not pursuant to a warrant based on probable cause. U.S. Const. amend. IV.

However, under the automobile exception, an officer may search a vehicle without a warrant if he has probable cause to do so. *Carroll v. United States*, 267 U.S. 132, 153 (1925); *California v. Carney*, 471 U.S. 386, 390 (1985). This narrow exception arose because the mobility of an automobile made it impracticable to secure a warrant. *Carroll*,

267 U.S. at 153. However, "the *Carroll* doctrine does not declare a field day for the police in searching automobiles. Automobile or no automobile, there must be probable cause for the search." *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973).

At issue in *Almeida-Sanchez* was whether the Border Patrol could search an individual stopped 25 miles from the border and search his car without a warrant or without probable cause or consent. *Id.* at 267-68. This unfettered discretion in the hands of the Border Patrol did not conform to the minimal requirement of the Fourth Amendment that searches be based on probable cause. *Id.* at 270. Likewise Iowa's law conveys unfettered discretion upon the police officers to search at will.

A traffic stop, although giving an officer probable cause to arrest the motorist for the traffic infraction, does not provide the officer probable cause to search. The probable cause necessary to arrest a person is different from the probable cause required to search. *See* 3 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 5.2(c), at 74 (1996). Speeding does not give an officer probable cause to conduct a search, like other, more serious crimes might. For instance, the circumstances surrounding a burglary arrest may give rise to probable cause to search for fruits of the crime. Speeding, on the other hand, does not establish probable cause to search for evidence of speeding.

In *Michigan v. Long*, 463 U.S. 1032, 1049 (1983), this Court approved in essence a "*Terry* pat-down" of an automobile. An officer may search the areas of an automobile where a weapon may be hidden if the officer has a



"reasonable belief based on 'specific and articulable facts which . . . reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of a weapon." *Id.* However, a police officer may not conduct an automobile search following any investigatory stop. *Id.* at 1049 n.14. Such a search is only allowed when the officer effectuates a "custodial arrest" under *Belton*. *Id.*

This result in *Long* would have been different under Iowa law. Long was driving erratically at an excessive speed and ended up in a ditch. *Id.* at 1035. The officers approached to investigate and eventually noticed a knife in the car. *Id.* at 1036. Under Iowa law, this officer would have been authorized to conduct a full search of both Long and the automobile based on the fact that the officer could have arrested him for speeding or failure to maintain control of his automobile. This Court, however held that the search, which consisted of shining a flashlight in the car, was justified under *Terry*, but an automatic full search would not be justified unless there had been an arrest. *Id.* at 1036, 1039.

If an officer wishes to search a vehicle after issuing a speeding citation, he must have probable cause that there is evidence of speeding or some other crime. In addition, he would have to establish probable cause to believe the specified evidence was in the vehicle he wished to search. The officer in this case admitted he was not looking for evidence of speeding. (App. p. 18). If there is no probable cause to search, once the officer issues the citation for the infraction, the motorist must be allowed to proceed on his way, not subjected to a search.

Many courts have considered traffic stops to be similar to *Terry* investigative stops, requiring additional suspicion before allowing a search.[3] For example, in Illinois, a routine traffic stop does not alone justify a search of the motorist or his vehicle. *People v. Penny*, 544 N.E.2d 1015, 1017 (Ill. Ct. App. 1989). The officer is required to have suspicion that the situation is more than a routine traffic stop in order to search. *Id.* In Pennsylvania, the courts have held that a police officer may not conduct a search

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[3] *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (reasonableness of a traffic stop is judged under *Terry*); *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990) (traffic stops are treated like *Terry* stops); *State v. Washington*, 623 So. 2d 392, 395 (Ala. Crim. App. 1993) (requiring suspicion of criminal activity if motorist stopped for traffic violation is to be further detained or searched following issuance of citation); *People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988) (police officer may not search incident to a traffic stop if the circumstances involve temporary detention of a motorist for issuance of a summons); *Johnson v. State*, 537 So. 2d 117, 119 (Fla. Ct. App. 1988) (stop for a traffic offense gives no reason to search); *People v. Koutsakis*, 649 N.E.2d 605, 608 (Ill. Ct. App. 1995) (traffic stop is more like a *Terry* stop than a formal arrest); *People v. Guzman*, 551 N.Y.S.2d 709, 711 (N.Y. App. Div. 1990) (traffic violation does not justify a search of the vehicle); *State v. Braxton*, 368 S.E.2d 56, 57-59 (N.C. Ct. App. 1988) (where motorist is stopped for speeding and not arrested, the police officer may not search); *State v. Taylor*, 683 N.E.2d 367, 370 (Ohio Ct. App. 1996) (no search is allowed when only a citation is issued); *State v. Flores*, 685 P.2d 999, 1005 (Or. Ct. App. 1984) (routine traffic stop is not sufficient cause to conduct a search and probable cause is required); *Commonwealth v. Grosso*, 672 A.2d 792, 794 (Pa. Super. Ct. 1996) (police officer must have independent probable cause to search during a routine traffic stop); *State v. Henry*, 910 P.2d 1290, 1293 (Wash. Ct. App. 1995) (police officer cannot use traffic stops as a basis for routine investigative search).



of a vehicle during a routine traffic stop unless he has independent probable cause that there is evidence in the vehicle. *See Commonwealth v. Grosso*, 672 A.2d 792 (Pa. Super. Ct. 1996).

In fact, this Court has found a traffic stop is similar to a *Terry* stop for purposes of *Miranda*. *Berkemer*, 468 U.S. at 439. The rule should be no different for a search. For Iowa to authorize a search that is not based on probable cause, or any level of suspicion for that matter, is contrary to the Constitution. The officer in this case admitted he did not have probable cause or suspicion to search Knowles's vehicle. (App. pp. 17-18). Knowles did not consent to the search. (App. p. 15). The marijuana was not in plain view. (App. p. 16). The search was not incident to a custodial arrest. (App. p. 14). Having no basis under the Fourth Amendment, the search in this case should have been declared unconstitutional and the evidence should have been suppressed.

## II. EXPANDING POLICE AUTHORITY TO SEARCH INCIDENT TO CITATION ABSENT PROBABLE CAUSE THREATENS THE SECURITY OF THE CITIZENRY AND IS NOT COMPELLED BY THE INVESTIGATIVE NECESSITY OF THE OFFICER

### A. Introduction

The *Robinson* Court specifically declined to address the issue of whether a search incident to a routine traffic stop is authorized under the search incident to arrest exception to the warrant requirement. *Robinson*, 414 U.S. at 235 n.6. The Iowa legislature nonetheless extended the search incident to arrest exception to include a search

incident to a citation. *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995) (stating that "[t]he Iowa legislation has . . . created a search incident to issuance of a citation exception to the search warrant requirement"). Based on this new exception, the Iowa Supreme Court upheld the search of Knowles's vehicle. *State v. Knowles*, 569 N.W.2d 601, 602-03 (Iowa 1997). Iowa's law that equates a citation with a custodial arrest is a qualitative expansion of police authority that creates an unprecedented exception to the probable cause requirement of the Fourth Amendment. Given the already extensive grant of police power to arrest motorists and search their vehicles, there is no "special need" to create a monstrous enforcement tool that will unnecessarily deprive otherwise law-abiding citizens of privacy rights.

### B. The Iowa Law's Reach is Expansive and Will Subject Millions of Citizens to Intrusive Searches for the Most Minor of Offenses

The search incident to citation law effects the personal security of hundreds of thousands of otherwise law-abiding Iowa citizens. The law confers upon police a blanket authority to search upon citing a citizen for an offense whenever he could have arrested. Since Iowa authorizes police to arrest for all traffic and motor vehicle equipment infractions, as well as violations of municipal codes, the breadth of the intrusion is monumental. *See* Iowa Code § 321.485 (1997); *State v. Ceron*, 573 N.W.2d 587, 590 (Iowa 1997).



A person may be searched for failing to have his or her dog leashed,[4] or licensed.[5] A police officer may also conduct a full-scale search upon citing a citizen for such minor infractions as jaywalking,[6] muffler violations,[7] not wearing a seat belt,[8] or failing to have a license displayed on a bicycle.[9] The possibilities are endless, subjecting millions of people to the unfettered authority of the state to conduct the most intrusive of searches for petty and technical violations of the law.

The Iowa statute is also particularly intrusive because it confers blanket or "bright-line" authority, entirely dispensing with individualized suspicion or case-by-case judicial scrutiny. As the dissenting judge in *Knowles* pointed out, "[t]he constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract." *Knowles*, 569 N.W.2d at 603 (Neuman, J., dissenting). Such a search can only be decided on a case-by-case basis. *Id.* (Neuman, J., dissenting) (citing *Sibron*, 392 U.S. at 59).

Bright-line rules are generally not favored; rather, each factual situation must be considered individually when determining the reasonableness of a search. *Ohio v.*

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[4] Newton, Iowa, Code § 11.0353.2(J) (1993).

[5] Newton, Iowa, Code § 13.0313 (1993).

[6] Iowa Code § 321.328 (1997).

[7] Iowa Code § 321.436 (1997).

[8] Iowa Code § 321.445 (1997).

[9] Newton, Iowa, Code § 11.1102 (1993).

*Robinette*, 117 S. Ct. 417, 421 (1996) (observing bright-line rules are generally disavowed in favor of a fact-specific determination of reasonableness). "The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron*, 392 U.S. at 59.

The expansive scope of Iowa's search incident to citation law coupled, with "bright-line" authority which insulates individual searches from meaningful judicial scrutiny, creates a substantial intrusion on citizens' privacy under any Fourth Amendment analysis.

### C. This Search is Intrusive and Humiliating When Compared to the Gravity of Conduct and Lack of Government Interest

Whenever a person is stopped by law enforcement, he is seized under the Fourth Amendment. *Terry*, 392 U.S. at 16. Any search of the seized person, even a limited pat-down, is not considered a "petty indignity". *Id.* at 17. "It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." *Id.* If an investigative stop such as the one at issue in *Terry* is a "serious intrusion," a traffic stop followed by a full-blown search is certainly a severe intrusion into the privacy and integrity of the motorist.

Since Iowa's search incident to citation law is expansive and intrusive, authorizing a full-blown search without individualized suspicion, there must be a substantive governmental need to justify the curtailment of privacy rights.



As discussed in Part I, Fourth Amendment reasonableness analysis allows a warrantless search without probable cause or individualized suspicion if "special needs" counter-balance the intrusion. *Vernonia*, 115 S. Ct. at 2391; *Von Raab*, 489 U.S. at 665-66. Any governmental assertion of "special needs" to search its citizens without suspicion must logically be judged against the law enforcement tools already available to meet these needs.

Police in Iowa have the full authority allowed by the Fourth Amendment to search and seize citizens and their automobiles.[10] This includes the ability to search a person or vehicle incident to arrest, to conduct protective pat downs under *Terry v. Ohio* and *Michigan v. Long*, to search an automobile without a warrant under *Carroll v. United States*, and to remove a driver and passengers from a vehicle. *Maryland v. Wilson*, 117 S. Ct. 882, 884 (1997); *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977). But most importantly, Iowa has taken full advantage of *United States v. Robinson* by establishing the right to arrest for all traffic, equipment, and municipal offenses. It is almost impossible in Iowa to have grounds to stop and detain a motorist without also having authority to arrest and search. With this authority already in pocket, how can there be a "special need" for additional search powers?

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[10] Petitioner can find no instances where an Iowa constitutional provision, statute, or judicial decision restricts police authority beyond what is proscribed under the Fourth Amendment to the United States Constitution. *See Cooper v. California*, 386 U.S. 58, 62 (1967) (States are free to enact search and seizure safeguards more stringent than required by the Federal Constitution.).

The answer is that Iowa cannot demonstrate a "special need" to search its citizens incident to issuance of a citation. If the governmental need were dire, then the State could simply arrest and search all traffic offenders. This is constitutionally permissible and Iowa law allows it.

### D. The Potential for Discriminatory Enforcement is Intolerable

Iowa's search incident to citation statute provides police with no standards or guidance as to when and against whom it should be invoked. A police officer making a traffic stop has complete discretion to search or not to search.

The statute does not require the officer to document his search. Thus, there is no effective means to track the frequency and manner in which the search power is exercised. Also, because the statute purports to authorize a blanket or "bright-line" search, there can be no judicial case-by-case assessment of reasonableness.

Thus, the police officer is entirely free to exercise this search power at his reasoned discretion, at his whim, or in a discriminatory fashion. Whatever the choice, there is no possibility of judicial oversight.

On the other hand, the requirement of an arrest as a predicate to a search will at least temper the officer's discretion because the required documentation will allow assessment of how and against whom this authority is exercised.



If police officers are required to either arrest the motorist and place him in custody or demonstrate probable cause to justify the search, the police will not have the unfettered power to invade the privacy of any citizen by merely issuing a citation. If the officer wishes to search a motorist whom he has stopped for failing to wear a seat belt, he should be required to arrest the motorist. Therefore, police officers will only arrest those whom he actually suspects of criminal activity beyond the traffic violation.

Finally, one may argue that *Whren v. United States*, 116 S. Ct. 1769 (1996), has removed a police officer's subjective intent from all case-by-case Fourth Amendment analysis. However, this should not justify ignoring the potential for discriminatory enforcement as a policy consideration in deciding whether to create additional bright-line authority to conduct warrantless searches. The likelihood of abuse and the absence of safeguards protecting privacy must always be considered in balancing governmental needs against the extent of the intrusion. *T.L.O.*, 469 U.S. at 342 n.8; *Delaware v. Prouse*, 440 U.S. 648, 654-55 (1979).

" 'Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed arrests or investigatory detentions.' " *Cupp v. Murphy*, 412 U.S. 291, 294 (1973) (quoting *Davis v. Mississippi*, 394 U.S. 721, 726-27 (1969)). Iowa's all-encompassing law allowing searches based on the most minor of infractions without probable cause surely authorizes a

wholesale intrusion on the personal security of the citizens of Iowa.

## CONCLUSION

The search of Knowles's vehicle was unreasonable and therefore unconstitutional intrusion into his privacy rights. For these reasons, the petitioner, Patrick Knowles, respectfully requests this Court reverse the decision of the Iowa Supreme Court.

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NO. 97-7597

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

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PATRICK KNOWLES,

Petitioner

vs.

STATE OF IOWA,

Respondent.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

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# RESISTANCE TO MOTION TO DISMISS WRIT OF CERTIORARI

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## STATEMENT OF FACTS

On March 9, 1996, Patrick Knowles was pulled over for speeding by a Newton, Iowa, police officer. (App. pp. 12-13). Marijuana and a pipe were discovered upon search of his automobile. (App. pp. 15-18).

Knowles was arrested and charged with possession of marijuana and keeping marijuana in a motor vehicle, both violations of the Iowa criminal laws. Iowa Code §§ 124.401(3) and 124.402(1)(e). In addition, he was charged with possession of the pipe under a Newton city drug paraphernalia ordinance. (Motion to Dismiss, Add. pp. 3-4).

Although the State of Iowa was the plaintiff in the prosecutions of the three criminal offenses, the possession of drug paraphernalia charge was made in a separate criminal action. (Hereinafter *Knowles I* refers to the drug paraphernalia prosecution and *Knowles II* is the two marijuana offenses.)

Iowa Rule of Criminal Procedure 6(1) authorizes the State to prosecute two or more offenses as separate counts in a single complaint or trial information if the crimes arose from the "same transaction or occurrence." Under Iowa procedure, a defendant has no right to move to consolidate similar charges at the trial level.

*Knowles I* and *Knowles II* proceeded independently with two separate suppression hearings and two separate trials. Upon convictions on all charges, Patrick Knowles appealed both cases.

With *Knowles I* and *Knowles II* pending before the Iowa Supreme Court, counsel for Patrick Knowles filed an application to consolidate the appeals. The application recited that the "appeals involved the exact same facts and issues" and that the interest of "judicial efficiency" would be served by addressing the issues once as opposed to twice. (Respondent's Motion to Dismiss, Add. pp. 1-2). The State of Iowa, represented by the Attorney General, resisted the consolidation motion, informing the Iowa Supreme Court that "[b]ecause there were two separate trials, necessarily involving two seperate [sic], if similar, records, consolidation of the cases on appeal would not promote judicial economy. Rather, it would lead to confusion as to the facts and issues." (*Id.*, Add. pp. 2-3).

The Iowa court denied consolidation and proceeded to hear and decide *Knowles I* and *Knowles II* in separate appeals. On September 17, 1997, a five judge division of the court affirmed *Knowles I*. (*Id.*, Add. pp. 3-6). A little over a month later on October 22nd, the Iowa Supreme Court, sitting en banc, rendered a 5-4 decision upholding the convictions in *Knowles II*. (App. pp. 30-34). Patrick Knowles petitioned this Court for a writ of certiorari on *Knowles II* only.[1]

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[1]Counsel felt that *Knowles I* was not as appropriate a candidate for certiorari as *Knowles II* because the suppression hearing in *Knowles I* was not court reported per customary procedure in simple misdemeanor cases in Iowa. The entire evidentiary record on the search issue was the judge's almost illegible handwritten notes. In addition, Patrick Knowles had already served his five-day sentence imposed in *Knowles I* so his potential relief was limited.



At no time during one and a half years that *Knowles I* and *II* were pending before the Iowa courts did the State of Iowa attempt to consolidate the cases or raise the defense of collateral estoppel. In addition, the Iowa Attorney General, having represented the State of Iowa on the appeals in *Knowles I* and *Knowles II*, did not raise the matter of issue preclusion in its opposition to Knowles's petition for writ of certiorari.

The defense of collateral estoppel is now raised for the first time by the Attorney General by way of motion to dismiss the writ of certiorari.

## SUMMARY OF RESISTANCE

At every stage in the proceedings in the Iowa courts, the State insisted that *Knowles I* and *Knowles II* be litigated in separate actions. The State of Iowa filed the cases separately at the trial court level and successfully resisted Patrick Knowles's motion to consolidate his appeals before the Iowa Supreme Court.

At no time did the State raise the defenses of collateral estoppel before the Iowa courts. In addition, the State did not bring the matter to this Court's attention in its brief in opposition to Knowles's petition for a writ of certiorari.

The doctrine of collateral estoppel serves the purposes of establishing finality to litigation and conserving judicial resources. The State had every opportunity to conserve the time and efforts of the courts and parties involved in *Knowles I* and *II*, but chose instead to insist that the matters be tried and appealed twice. The State of Iowa waived, and, in fact, invited the alleged error.

Finally, the Iowa Supreme Court's decision in *Knowles I* could not have controlled *Knowles II* because the former was heard by a five judge division of the court and the latter was decided en banc. Thus, the search issue decided in *Knowles I* could not have been, nor was it intended to be, binding on the entire Iowa Supreme Court in *Knowles II*.

The State chose to have Patrick Knowles's criminal offenses decided in two litigations and the Iowa Supreme Court agreed. This Court should not dismiss the writ based on a doctrine designed to facilitate judicial economy when the State of Iowa and the Iowa Supreme Court, with full knowledge of the repetitive nature of the cases, nevertheless elected to hear and decide *Knowles I* and *II* separately. Full faith and credit must be given to the Iowa court's treatment of the appeals.

If *Knowles I* is a final judgment, that decision controls only Patrick Knowles's conviction for possession of drug paraphernalia. It should not bind this Court in deciding *Knowles II* because the State of Iowa and the Iowa Supreme Court knowingly treated *Knowles I* as a separate and non-preclusive decision.



## ARGUMENT

### I. THE FULL FAITH AND CREDIT CLAUSE AND STATUTE REQUIRE THIS COURT TO GIVE THE JUDGMENT IN *KNOWLES I* THE SAME NONPRECLUSIVE EFFECT THAT THE IOWA SUPREME COURT ACCORDED IT IN *KNOWLES II*.

A collateral estoppel defense raised in the federal courts alleging the preclusive effect of a state court judgment must be resolved by the principles embodied in the Full Faith and Credit Clause and statute. *Durfee v. Duke*, 375 U.S. 106, 109 (1963).

The Full Faith and Credit Clause, article IV, section 1, of the United States Constitution, and its enacting statute, 28 U.S.C. section 1738, require the federal courts to accord a state court judgment the same preclusive effect it is entitled to in the courts of the rendering state. *Allen v. McCurry*, 449 U.S. 90, 96 (1980). In deciding this issue, the federal courts are to apply the law of the state in which the judgment is taken. *Kremer v. Chemical Construction Corp.*, 465 U.S. 461, 481-82 (1982).

This Court summarized the source and operation of the principle: "[w]e have a parallel system of state and federal courts, and the concerns of comity reflected in § 1738 generally allow states to determine the preclusive scope of their own courts' judgments." *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 385 (1985).

Here, the manner and sequence in which the Iowa Supreme Court decided *Knowles I* and *Knowles II* plainly shows that *Knowles I* did not have, and was not intended to have, a preclusive effect.

First, and most obviously, the Iowa Supreme Court decided *Knowles II* five weeks after *Knowles I* and did not mention the earlier decision let alone assign it a preclusive effect. Four justices of the Iowa court participated in both decisions so the court certainly knew and intended to decide the common search issue twice.

Second, the Iowa Supreme Court assigned *Knowles I*, a simple misdemeanor appeal, to a five judge division of the court, whereas *Knowles II* was heard by the Court *en banc*. One of the justices hearing *Knowles I* was a senior judge sitting by designation who did not participate in *Knowles II*. Thus, the four justices voting to affirm *Knowles I* could not have controlled the disposition of the *en banc* decision issued just weeks later.

Lastly, while both *Knowles I* and *II* were pending on appeal, the Iowa Supreme Court handed down *State v. Doran*, 563 N.W.2d (Iowa 1997), in which the court held for the first time that the search incident to citation statute was valid under the Fourth Amendment. By supplemental briefing submitted in *Knowles I* and *Knowles II*, the defendant asked the Iowa court to reconsider *Doran*. The court's response once again showed that *Knowles I* was assigned the backseat in relation to *Knowles II*.

The five judge division in *Knowles I* refused to revisit *Doran*: "Defendant urges us to reconsider our *Doran* holding, but we decline the invitation." (Motion to Dismiss,



Add. p. 5). In sharp contrast, five weeks later the entire Iowa Court agreed to reconsider *Doran* in *Knowles II* and held in a 5-4 decision: "[w]e are satisfied that our decision in Doran properly identified the public policy reasons that support . . . [the search].." (App. p. 33).

The Iowa Supreme Court clearly treated *Knowles I* as a summary disposition based on recent controlling precedent in *Doran*. On the other hand, *Knowles II* involved the entire court deciding the search issues anew. As further proof of the summary treatment of *Knowles I*, Justice Ternus joined the per curiam decision affirming *Knowles I*, although she had dissented in *Doran* and would again dissent in *Knowles II*. (Motion to Dismiss, Add. p. 4 and App. p. 34).

When the Iowa Attorney General requested *Knowles I* and *II* to be decided separately, the Iowa Supreme Court agreed but quite sensibly assigned the misdemeanor appeal in *Knowles I* for summary disposition under *Doran* and heard *Knowles II* as a full blown reconsideration of the search issue before the entire court.[2]

Under these circumstances, the Iowa Supreme Court was not bound, and did not intend to be bound, by its decision in *Knowles I*. The Full Faith and Credit Clause forbids attaching preclusive effect to *Knowles I* when the Iowa Supreme Court declined to do so.

---

[2]The Iowa Supreme Court's treatment of *Knowles I* and *II* is consistent with an exception to the general rule of issue preclusion recognized by the Restatement (Second) of Judgments § 28(3): Relitigation of the issue is not precluded where "[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two [litigations]."

*Marrese*, 470 U.S. at 384 (stating federal courts cannot give greater preclusive effect to judgment than rendering state would).

**II. THE STATE OF IOWA HAS WAIVED ITS RIGHT TO ASSERT ISSUE PRECLUSION BY FAILURE TO RAISE THE DEFENSE IN A TIMELY MANNER AND BY CAUSING *KNOWLES I* AND *II* TO PROCEED THROUGH THE IOWA COURTS AS SEPARATE ACTIONS AND APPEALS.**

The doctrine of collateral estoppel promotes judicial economy by prohibiting the endless relitigation of an issue once it has been finally decided by a court of competent jurisdiction. *Montana v. United States*, 440 U.S. 147, 153-54 (1979). It is not a jurisdictional matter, but draws its authority from the power of courts to imbue litigation with finality and certainty and to conserve judicial time and resources.

Here, the State of Iowa elected to file two separate criminal proceedings against Patrick Knowles despite the fact that there was a single act of criminal possession of contraband. Knowles had no authority to control the course and manner of the litigations.

On appeal of these judgments, it was defendant Knowles who quite reasonably requested that the Iowa Supreme Court conserve resources and consolidate these appeals which raised legal issues regarding a single search carried out by the city police. Once again, the State of Iowa insisted that the actions proceed separately and in fact arguably misled the Iowa Supreme Court by alleging in its resistance to consolidation:

> Because there were two separate trials, necessarily involving two seperate [sic], if similar records, consolidation of the cases on appeal would not promote judicial economy. Rather, it would lead to confusion as to the facts and issues. (Motion to Dismiss, Add. pp. 2-3).



The Iowa Supreme Court, unfamiliar with the case at this preliminary stage of the appeal, undoubtedly relied on this representation to deny consolidation.

The Attorney General of Iowa, as legal counsel for the state, requested that the appeals proceed separately and fully participated in both appeals. After *Knowles I* was decided, the Attorney General did not move for summary disposition of *Knowles II* on grounds of collateral estoppel. In fact, given the state's resistance to consolidation, the claim would have required an embarrassing argument.

Iowa law requires that collateral estoppel be timely pleaded as a defense or it is waived. *Swisher & Cohrt v. Yardarm, Inc.*, 236 N.W.2d 297, 298-99 (Iowa 1975); *Bickford v. American Interinsurance Exchange*, 224 N.W.2d 450, 453-54 (Iowa 1974). The State thus waived the issue by not promptly urging the defense after the Iowa Supreme Court's decision in Knowles I.[3] *Aetna Casualty & Surety Co. v. General Dynamics Corp.*, 968 F.2d 707, 711 (8th Cir. 1992) (stating collateral estoppel must be raised at first reasonable opportunity after rendering of decision having preclusive effect); *Lujan v. United States Dept. of the Interior*, 673 F.2d 1165, 1168 (10th Cir. 1982)

[3]The Attorney General's argument that it had no reason or opportunity to raise preclusion during the five-week period between the decisions in *Knowles I* and *Knowles II* would be more convincing had the issue been promptly raised at the next available opportunity which would be the brief in opposition to the petition for certiorari.

(supplemental brief appropriate method to raise collateral estoppel arising from judgment rendered during pendency of appeal).

Once again, when provided an opportunity to resist Knowles's petition for writ of certiorari, the Attorney General failed to raise issue preclusion. This omission should also be treated as a waiver under Supreme Court Rule 15(2) and (4). This rule formalized the practice of this Court announced in *Oklahoma City v. Tuttle*, 471 U.S. 808, 815-16 (1985): "Our decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits of one or more of the questions presented in the petition. Nonjurisdictional defects of this sort should be brought to our attention *no later* than in respondent's brief in opposition to the petition for certiorari; if not, we consider it within our discretion to deem the defect waived. Here we granted certiorari to review an issue squarely presented to and decided by the Court of Appeals, and we will proceed to decide it."

The state waived this issue at every stage of these proceedings. In fact the concept of waiver does not adequately characterize the state's active participation in assuring that the search issue was decided twice: the State of Iowa insisted on it.

Now the state is asking this Court to invoke a doctrine whose purpose is to conserve judicial time and resources on grounds of a duplicitous legal proceeding that it asked for and Knowles resisted.



The state has already caused the courts and parties to proceed in Iowa through two separate trials and appeals. There are no judicial resources to conserve at this point. The doctrine of collateral estoppel and its avowed purpose of judicial economy are not advanced by allowing the offending party to evoke it, especially when it's too late to benefit the courts or litigants.

The state is engaging in eleventh hour gamesmanship by attempting to rely on a hyper-technical and unjust application of issue preclusion. The result of granting the state's motion to dismiss would be a denial of complete procedural justice to Patrick Knowles and an unearned, and in fact undeserved, windfall for the Attorney General of Iowa.

## III. THE DISMISSAL OF CERTIORARI PROCEEDINGS IN *RICCI v. VILLAGE OF ARLINGTON HEIGHTS* DOES NOT DETRACT FROM OR NARROW THE ISSUE PRESENTED HERE.

In *Ricci v. Village of Arlington Heights*, this Court granted certiorari on the issue of whether the Fourth Amendment prohibits the arrest of a person for a violation of an ordinance that carries only a fine as punishment. The Court later dismissed the writ as improvidently granted.

The State of Iowa implies in the Motion to Dismiss that the dismissal of the writ in *Ricci* narrows the issue presented in this case. (Motion to Dismiss, p. 6). The State also asserts that the Knowles case does not involve the same issue as *Ricci*, and, therefore, Knowles "is not an appropriate vehicle for resolving the question presented."

There is no question that this case is not a proper vehicle for deciding the issue in *Ricci*. They are two separate cases involving two separate constitutional questions.

The dismissal of the writ in *Ricci,* has no impact on disposition in this case because Knowles has not raised this issue, and, further, he was not arrested for a minor offense. Knowles was placed in custody for marijuana charges, not for speeding. *Ricci*, therefore, does not affect the question presented in this case.

## CONCLUSION

After causing the defendant, his counsel, and the courts of Iowa to endure two suppression hearings, two trials and two separate Iowa Supreme Court appeals, and after Patrick Knowles and amici curiae have expended countless hours preparing and filing four briefs before this Court, the Iowa Attorney General for the first time is raising the defense of collateral estoppel, a doctrine whose primary purpose is to conserve judicial resources. The irony is thick.

This Court should promptly deny the State's motion to dismiss on the basis of the Full Faith and Credit owing the Iowa Court's treatment of *Knowles I* and *II* and also on grounds of waiver.

When a party repeatedly fails to raise a defense when required by Iowa law and Supreme Court rules, a finding of waiver is appropriate. When the party instigates the repetitious litigation, reliance on a doctrine whose purpose is judicial economy should be strictly foreclosed.



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**PROOF OF SERVICE**

On the 13th day of July, 1998, I, the undersigned, did serve Petitioner's Resistance to Motion to Dismiss Writ of Certiorari on all parties to this appeal by mailing one (1) copy thereof to the following counsel:

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**CERTIFICATE OF FILING**

On the 13th day of July, 1998, I the undersigned, did file Petitioner's Resistance to Motion to Dismiss Writ of Certiorari with the Clerk of the Supreme Court of the United States by timely mailing, by First Class U.S. mail, pursuant to Supreme Court Rule 12(2) twelve (12) copy to said Clerk at One First Street, N.E., Washington D.C. 20543.

Paul Rosenberg

(1)

FILED
AUG 24 1998
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SUPREME COURT, U.S.

No. 97-7597

In The

# Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

*Petitioner,*

vs.

STATE OF IOWA,

*Respondent.*

On Writ Of Certiorari To The
Supreme Court Of Iowa

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## COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Iowa statutes authorize peace officers either to make a custodial arrest or to issue a citation in lieu of arrest for nearly any offense. Iowa Code section 805.1(4) provides that "the issuance of a citation . . . does not affect the officer's authority to conduct an otherwise lawful search." The Iowa Supreme Court has interpreted that provision to authorize a full search incident to arrest where officers have probable cause to make a custodial arrest but forego a highly intrusive custodial arrest and, instead, elect to issue a citation.

The questions presented are:

1. Does Iowa Code section 805.1(4) violate the Fourth Amendment by authorizing search incident to issuance of a citation where the statute conditions search upon the existence of probable cause to arrest and statutory authority to make a custodial arrest?

2. Does the exclusionary rule apply to the fruits of a search conducted incident to issuance of a citation where the officer relied on a state statute which authorizes such search?

3. Is Knowles precluded from challenging the search in this case due to his failure to seek review of the final judgment in a companion case which involved an identical challenge to the same search which is being challenged in this proceeding?

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*State v. Knowles*, 569 N.W.2d 601 (Iowa 1997) (J.A. 30).

*State v. Knowles*, 570 N.W.2d 255 (Iowa 1997) (table) (unpublished per curiam) (Addendum 1).

## JURISDICTION

Jurisdiction to review the decision of the Iowa Supreme Court is conferred by 28 U.S.C. § 1257(a). The petition for certiorari was filed on January 20, 1998, within ninety days of the October 22, 1997 decision of the Iowa Supreme Court, and is therefore timely under Supreme Court Rule 13.

Knowles, however, did not seek review of a companion decision of the Iowa Supreme Court entered on September 17, 1997, upholding Knowles' conviction for ordinance violations. That unpublished decision rejected the identical challenge to the admission of evidence from the same search. *State v. Knowles*, Addendum 1. On June 29, 1998, Respondent State of Iowa filed a motion to dismiss the writ as improvidently granted based on the preclusive effect of this final judgment. That motion was denied on August 12, 1998.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

**United States Constitution, Amendment Four:**

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be

violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Iowa statutes:**

**804.7 Arrests by peace officers.**

A peace officer may make an arrest in obedience to a warrant delivered to the peace officer; and without a warrant:

1. For a public offense committed or attempted in the peace officer's presence.

2. Where a public offense has in fact been committed, and the peace officer has reasonable ground for believing that the person to be arrested has committed it.

3. Where the peace officer has reasonable ground for believing that an indictable public offense has been committed and has reasonable ground for believing that the person to be arrested has committed it.

4. Where the peace officer has received from the department of public safety, or from any other peace officer of this state or any other state or the United States an official cummunication by bulletin, radio, telegraph, telephone, or otherwise, informing the peace officer that a warrant has been issued and is being held for the arrest of the person to be arrested on a designated charge.

5. If the peace officer has reasonable grounds for believing that domestic abuse, as defined in section 236.2, has occurred and has



reasonable grounds for believing that the person to be arrested has committed it.

6. As required by section 236.12, subsection 2.

Iowa Code section 804.7 (1995).

***805.1. Issuance of citation – release***

1. Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11 [the stalking statute], a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

* * *

4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of R.Cr.P. section 27, subsection 2, paragraph "a", Ia.Ct.Rules, 3rd ed.

* * *

6. When a citation is not issued for an offense for which a citation is authorized, the arrested person may be released pending initial appearance on bail or on other conditions determined by pretrial release guidelines. When an arrested person furnishes bail, the officer then in charge of the place of detention shall secure it in safekeeping and shall see that it is forwarded to

the office of the clerk of court during the clerk's next regular business day.

Iowa Code section 805.1 (1995).

## STATEMENT OF THE CASE

### A. STATUTORY BACKGROUND:

Iowa law provides officers with the option to make a custodial arrest or to issue a citation for nearly any offense, ranging from very minor traffic offenses to very serious crimes, including most felonies. Iowa Code §§ 804.7, 805.1(1), 805.1(6) (1995). Section 805.1(4) provides that issuance of a citation does not affect the officer's authority to conduct an otherwise lawful search. Iowa Code § 805.1(4) (1995).

### B. FACTS:

The facts are not contested. On March 9, 1996, Newton police officer Ronald Cook observed Patrick Knowles speeding 43 miles per hour in a 25 miles per hour zone. J.A. 11-14. Officer Cook stopped Knowles' car and obtained Knowles' driver's license and registration, then returned to his patrol car and requested a computer check on Knowles' license. Officer Cook was informed that Knowles had a valid license and that there was no outstanding warrant for his arrest. Officer Cook, although aware that he had statutory authority to make a custodial arrest, then wrote a speeding citation and awaited the arrival of a backup officer. J.A. 11-17. After the backup officer arrived, Officer Cook returned to Knowles' car and gave Knowles the citation.



Contemporaneously with issuance of the citation, the officer searched Knowles' car. J.A. 15, 17-19. During the search of the car, Officer Cook found two cotton gloves under the driver's seat. Inside one of the gloves were a "pot" pipe and a plastic bag containing a green plant material. J.A. 16. The search of Knowles' car led to the filing of both state and municipal charges.

### C. PROCEDURAL HISTORY:

As a result of the search of his car, Knowles was charged with possession of a controlled substance and prohibited acts by a registrant (keeping marijuana in a motor vehicle) in violation of Iowa Code sections 124.401(3) and 124.402(1)(e). J.A. 2-5. He moved to suppress the evidence found in his car on the ground that the statute which authorized the search, Iowa Code section 805.1(4), violated the Fourth Amendment to the United States Constitution. J.A. 6-8. After his motion to suppress was denied, Knowles stipulated to the minutes of testimony and waived his right to a jury trial. J.A. 20-23. He was found guilty of both crimes and sentenced to concurrent ninety-day jail terms. J.A. 26-29. It is these convictions which are at issue in the instant certiorari proceeding.

As a result of the same search, Knowles was separately charged with possession of drug paraphernalia, in violation of a municipal ordinance. Knowles also sought in those proceedings to suppress the evidence obtained during the search of his car. His motion to suppress was denied and he was found guilty. Addendum 1.

Knowles timely appealed his convictions to the Iowa Supreme Court. Knowles moved to consolidate his cases

on appeal. His application to consolidate the appeals stated that "[b]oth appeals involved the exact same facts and issues." Addendum to Motion to Dismiss Writ 1. The State resisted consolidation because there were separate trials below and consolidation "would lead to confusion as to the facts and issues." Addendum to Motion to Dismiss Writ 2-3. The Iowa Supreme Court denied the motion to consolidate. In his separate appeals, Knowles unsuccessfully raised an identical challenge to the March 9 search. Addendum 1; J.A. 30.

In a per curiam opinion issued September 17, 1997, the Iowa Supreme Court affirmed the municipal ordinance conviction and rejected Knowles' constitutional challenge to the search. Addendum 1. Knowles did not seek review by certiorari of that decision.

On October 22, 1997, in an en banc ruling, the Iowa Supreme Court upheld Knowles' convictions for violations of state laws prohibiting possession of marijuana and keeping a controlled substance in an automobile. J.A. 30. The Court held that Iowa Code section 805.1(4) provides authority to search when a violation has occurred that would constitute grounds for arrest. J.A. 32. The Court further held that section 805.1(4) does not offend the Fourth Amendment. J.A. 33.

The Court refused to consider Knowles' argument that the statutory authorization of custodial arrest for speeding violated the Fourth Amendment because Knowles had not raised that argument in his motion to suppress. J.A. 33. Knowles does not raise that claim in this certiorari proceeding. Pet. Br. at 24.

On January 20, 1998, Knowles filed a petition for certiorari from the October 22, 1997 decision. The only



question presented in the petition is a facial challenge to section 805.1(4). The petition for writ of certiorari was granted on March 23, 1998.

On June 29, 1998, the State of Iowa filed a motion to dismiss the writ as improvidently granted because Knowles had not sought review of the companion decision rejecting defendant's identical challenge to the same search as is challenged in this proceeding. This Court denied the motion on August 12, 1998.

## SUMMARY OF ARGUMENT

Iowa Code section 805.1(4) (1995) authorizes law enforcement officers to conduct a search contemporaneously with issuance of a citation where the officer has probable cause to arrest but elects to issue a citation and release the suspect. The scope of the search authorized under section 805.1(4) is the same as that constitutionally permitted for searches incident to custodial arrest.

### I.

Knowles makes a facial challenge to the statute. Under *Sibron v. New York*, 392 U.S. 40 (1968), Knowles is precluded from making a facial Fourth Amendment challenge to a statute authorizing warrantless searches. Knowles does not raise a challenge to the statute as it applies to him. Consequently, Knowles presents no question for review.

If the Court reaches Knowles' Fourth Amendment challenge to Iowa Code section 805.1(4), Knowles must show that there is no case in which the statute may

constitutionally be applied. Knowles cannot meet that heavy burden. He has impliedly conceded that the statute can be constitutionally applied in some contexts, *i.e.*, where a citation is issued for an offense other than a traffic offense; and where a citation is issued in lieu of continued detention after a custodial arrest has been made. Even if Knowles has not conceded, he cannot show that there is no case in which section 805.1(4) could be constitutionally applied.

## II.

**A.** The Court has long recognized that searches incident to lawful arrest are permissible under the Fourth Amendment. Such searches are *per se* reasonable under the Fourth Amendment as they are based upon probable cause to arrest.

**B.1.** Search incident to citation is a constitutionally valid subcategory of search incident to arrest. Iowa Code section 805.1(4) complies with the Fourth Amendment as the statute:

> (1) authorizes search incident to citation only where the officer has probable cause to arrest and is statutorily authorized to make a custodial arrest;
>
> (2) furthers the same justifications underlying search incident to custodial arrest, i.e. officer safety and preservation of evidence;
>
> (3) promotes the privacy concerns which underlie the Fourth Amendment as it encourages officers to cite and release suspects rather than effecting much more intrusive custodial arrests; and,



> (4) establishes a bright-line rule which is clear and easily applied by officers in the fluid, often confusing, circumstances surrounding detention of criminal suspects.

Therefore, search incident to citation is *per se* reasonable under the Fourth Amendment where there is probable cause to arrest.

> **B.2.** If section 805.1(4) is not deemed *per se* reasonable, a balancing test applies. The Court balances the State's interest in searching against the intrusion on protected privacy interests. Because the searches authorized by the challenged statute are conditioned upon probable cause, there can be no doubt that the statute complies with the Fourth Amendment.

The validity of that conclusion is reinforced by an examination of the particular interests at stake. The intrusion on suspects' privacy interests is limited. That is because Iowa law enforcement officers have authority to make a custodial arrest, and to search incident to that arrest, in any case where a citation might be issued. On the other hand, the State has a weighty interest in searching in order to protect officer safety and preserve evidence. That interest clearly outweighs any intrusion on the privacy of suspects.

**B.3.** The permissible scope of a search incident to citation is the same as for a search incident to custodial arrest. The scope of the search must be limited to the rationales which underlie the search. Search incident to citation, like search incident to custodial arrest, is justified by the need to protect officer safety and to prevent destruction of evidence. Those objectives can only be met through a full search; a *Terry*-type

search would not be sufficient to protect officers or prevent the destruction of evidence.

**B.4.** The Court should issue a bright-line rule authorizing a search whenever a citation is issued and there is probable cause to arrest. Determining whether it is reasonable to believe that a particular suspect is likely to use a weapon or destroy evidence is a difficult question of law and fact. That determination must be made frequently, quickly and in a wide variety of factual circumstances. Under those circumstances, the protections of the Fourth Amendment can be realized only if police act under a clear rule which permits officers to accurately predetermine whether a search is permitted.

**B.5.** Iowa Code section 805.1(4) permits searches only where there is probable cause to arrest. The requirement of probable cause is sufficient to prevent random, suspicionless searches, prevent expansion of officers' authority to search and curb potential abuses of police power.

**III.**

**A.** To the extent that Knowles may be raising a challenge to Iowa Code section 805.1(4) as it applies to him, the search of Knowles' car was lawful as it was based upon probable cause to arrest Knowles.

**B.** Further, even if the search was unlawful, the exclusionary rule does not apply as the search was conducted in good faith reliance on the validity of section 805.1(4).



Knowles has failed to carry his burden to establish that Iowa Code section 805.1(4) violates the Fourth Amendment. That section is constitutionally reasonable as it is based upon probable cause and because the State's interest in searching outweighs any impact on suspects' privacy interests. Consequently, Knowles' convictions should be affirmed.

## ARGUMENT

Knowles makes a facial challenge to the validity of Iowa Code section 805.1(4) (1995). He contends that a statutory grant of authority to search based upon the issuance of a citation violates the Fourth Amendment to the United States Constitution. The Iowa Supreme Court properly rejected that claim, holding that a search incident to citation is a lawful search incident to arrest and does not offend the Fourth Amendment where the officer has probable cause and statutory authorization to make a custodial arrest. The decision of the Iowa Court should be affirmed.

### I. KNOWLES' FACIAL CHALLENGE TO IOWA CODE SECTION 805.1(4) SHOULD NOT BE PERMITTED BUT, IF THE COURT REACHES THE MERITS OF THAT CLAIM, KNOWLES CANNOT MEET HIS BURDEN TO SHOW THAT THE STATUTE COULD NEVER BE CONSTITUTIONALLY APPLIED.

Knowles challenges Iowa Code section 805.1(4) on its face; his facial challenge should not be permitted. This Court refused to review a "stop-and-frisk" law on its face

in *Sibron v. New York*, 392 U.S. 40, 59 (1968), finding facial review under the Fourth Amendment to be an "abstract and unproductive exercise."

> The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case.

*Id.* Thus, Knowles cannot challenge the validity of section 805.1(4) on its face. Instead, he is limited to challenging the statute as it applies to him. Because Knowles has not made an "as applied" challenge to the statute, he presents no issue for review, and therefore his convictions should be affirmed.

Knowles' challenge is precluded for a second reason. Prior to the decision in this case, the Iowa Supreme Court rejected an identical challenge by Knowles to section 804.1(5); that case arose out of the same search at issue here. Addendum 1. Knowles did not seek review of that decision. That earlier, final decision on the same issue is conclusive in this proceeding. *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 401 (1981); Restatement Second of Judgments § 14, comment a; § 27, comment 1 (1981); 18 Wright, Miller & Cooper, *Federal Practice and Procedure* § 4404.

If the Court chooses to reach Knowles' facial challenge, Knowles still must carry a heavy burden. He must show that the statute could *never* be lawfully applied. *Skinner v. Railway Labor Exec. Ass'n*, 489 U.S. 602, 632 n.10 (1989) (involving a facial challenge to a federal regulation authorizing drug and alcohol testing of railway employees), citing *Bell v. Wolfish*, 441 U.S. 520, 560 (1979).



Any overbreadth of the statute is not ground for reversing the judgment below. *Sibron*, 392 U.S. at 59, n.20. Knowles cannot meet his burden to show that section 805.1(4) could not be constitutionally applied. In fact, Knowles has impliedly conceded that the statute can be constitutionally applied in some situations.

First, Knowles' statement of the question presented and his brief on the merits challenge section 805.1(4) only as it applies to issuance of a traffic citation. Pet. Br. at i. Apparently, he does not even challenge the constitutionality of search incident to citations for non-traffic offenses.

Second, section 805.1(4) authorizes searches incident to citation in lieu of arrest as well as incident to citation in lieu of continued custody after an arrest has been made. Iowa Code § 805.1(4) (1995). Knowles concedes that a search incident to a custodial arrest is constitutional, pointing to custody as the essential factor underlying the reasonableness of searches incident to arrest. Pet. Br. at 8-9, 24. In making that concession, Knowles necessarily concedes that section 805.1(4) can be constitutionally applied in some situations, i.e., in cases where a custodial arrest and search incident to arrest are made and the suspect is later released on a citation.

Knowles has in effect conceded the constitutionality of section 805.1(4). Even if Knowles has not conceded, however, he has not met his burden to establish that search incident to citation violates the Fourth Amendment.

## II. IOWA CODE SECTION 805.1(4) COMPLIES WITH THE FOURTH AMENDMENT AS IT AUTHORIZES SEARCHES INCIDENT TO CITATION ONLY WHERE THERE IS PROBABLE CAUSE TO ARREST AND CONSTITUTES A LESSER INTRUSION ON FOURTH AMENDMENT INTERESTS THAN CUSTODIAL ARREST AND INCIDENT SEARCH.

The Iowa Supreme Court has interpreted Iowa Code section 805.1(4) as authorizing officers to make a search of the same scope as a search incident to custodial arrest upon issuance of a citation. J.A. 33; *State v. Doran*, 563 N.W.2d 620 (Iowa 1997). Knowles claims that such searches do not fall within the search incident to arrest exception to the warrant requirement, and that they violate the Fourth Amendment. He argues that when a citation is issued, officers may not search unless one of the recognized exceptions to the warrant requirement applies. Knowles' claim should be rejected.

Reasonableness is the standard by which Iowa Code section 805.1(4) must be judged. That statute fully satisfies the Fourth Amendment as it authorizes searches only where the officer has probable cause to arrest and is statutorily authorized to make a custodial arrest. Searches under the statute are, therefore, merely a subset of searches incident to arrest. Thus, searches incident to citation, like the more familiar searches incident to custodial arrest, are *per se* reasonable and an exception to the warrant requirement. In addition, if a balancing test is applied, the State's interests in searching, i.e., officer safety and preservation of evidence, outweigh the affected privacy interests – particularly in light of the fact



that Iowa officers may unquestionably make a custodial arrest and incidental search. Therefore, Knowles' challenge to section 805.1(4) should be rejected.

Knowles' claim is made against the following statutory background. Iowa peace officers are authorized to make custodial arrests for any "public offense." *See* Iowa Code §§ 805.1(6) and 804.7 (1995). Alternatively, an officer having grounds to make an arrest on a bailable offense[1] may forego arrest and, instead, elect to issue a citation. If an arrest has already been made, the officer may issue a citation in lieu of continued detention. Iowa Code § 805.1(1) (1995). The challenged statute then provides that "issuance of a citation . . . does not affect the officer's authority to conduct an otherwise lawful search." Iowa Code § 805.1(4) (1995).

The Iowa Supreme Court has interpreted section 805.1(4) as creating a bright-line rule authorizing a search, of the same scope as the Constitution authorizes for a search incident to a custodial arrest, when an officer issues a citation. *State v. Knowles*, 569 N.W.2d 601 (Iowa

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[1] Section 805.1(1) (1995) authorizes use of citations for any bailable offense, except violations of section 708.11 (stalking). Iowa limits nonbailable offenses to the following:

> Any class "A" felony, murder, felonious assault, sexual abuse in the second or third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 124.401, subsection 1, paragraph "a" [manufacture, possession and possession with intent to deliver a controlled substance].

Iowa Code §§ 805.1(1), 811.1, 708.11, 124.401(1)(a) (1995).

1997); *State v. Doran*, 563 N.W.2d 620 (Iowa 1997); *State v. Cook*, 530 N.W.2d 728, 731-732 (Iowa 1995); *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996). The Court recognized that officers in Iowa have statutory authority to make a custodial arrest in every case, and found that, " '[t]o the extent the officer elects to . . . pursue a lesser intrusion [than custodial arrest], he has a right to condition that election on certain aspects of detention and search which are conducive to the officer's safety.' " *Doran*, 563 N.W.2d at 623, *quoting*, *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). *See also Knowles*, J.A. 33. In Knowles' case, the Court went on to hold that the authority to search conferred by section 805.1(4) does not extend beyond that permitted by the Fourth Amendment. J.A. 33. *Accord Doran*, 563 N.W.2d at 623.

In determining whether section 805.1(4) is consistent with the Fourth Amendment, the Court determines whether the authorized searches are "reasonable." In making a reasonableness determination, the Court looks to two sources: the traditional common-law protections against unreasonable searches and seizures;[2] and a

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[2] *See e.g. Steagald v. United States*, 451 U.S. 204, 217 (1981) ("The common law may, within limits, be instructive in determining what sorts of searches the Framers of the Fourth Amendment regarded as reasonable."); *Whren v. United States*, 517 U.S. 806, 819 (1996) (following "the traditional common-law rule that probable cause justifies a search and seizure."); *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) ("Both the standards and procedures for arrest and detention have been derived from the Fourth Amendment and its common-law antecedents."); *Weeks v. United States*, 232 U.S. 383, 389-396 (1914) (looking to the common-law of England and the United States in evaluating the constitutionality of searches incident to arrest).



balancing of the government's interest requiring the intrusion against the individual's privacy interests.[3] However, "[w]ith rare exceptions . . . the result of that balancing is not in doubt where the search or seizure is based upon probable cause." *Whren v. United States*, 517 U.S. 806, 816 (1996).

Where probable cause has existed, the only cases where the Court has found it necessary to actually perform a balancing analysis have involved searches or seizures conducted in an

> extraordinary manner, usually harmful to an individual's privacy or even physical interests – such as, for example, seizure by means of deadly force, . . . unannounced entry into a home, . . . entry into a home without a warrant, . . . or physical penetration of the body.

*Whren*, 517 U.S. at 818 (internal citations omitted).

Because no such "extraordinary" means of executing a search is at issue in this case, there is no need to perform the traditional Fourth Amendment balancing analysis. The requirement that the search be predicated

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[3] *See, e.g., Whren*, 517 U.S. at 816 (Fourth Amendment cases involve a balancing of all relevant factors); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979) (the permissibility of a particular law enforcement practice is judged by balancing its intrusion against its promotion of legitimate governmental interests); *Camara v. Municipal Court*, 387 U.S. 523, 536-37 (1967) ("there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (in determining reasonableness, the Court balances the need to search against the invasion which the search entails).

upon probable cause to arrest is, by itself, sufficient to satisfy the Fourth Amendment. Even if a balancing analysis is performed, Iowa Code section 805.1(4) passes Fourth Amendment muster.

### A. SEARCHES INCIDENT TO ARREST ARE *PER SE* REASONABLE UNDER THE FOURTH AMENDMENT.

Searches incident to arrest are *per se* reasonable under the Fourth Amendment as they are based on probable cause to arrest. The validity of such searches is unquestionable.

"It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment." *United States v. Robinson*, 414 U.S. 218, 224 (1973). The right to search the person of an arrestee "has been regarded as settled from its first enunciation"; the right to search the area within the control of the arrestee has likewise been long-recognized. *Id. Accord, Agnello v. United States*, 269 U.S. 20, 30 (1925) (the right to make a warrantless search incident to arrest "is not to be doubted."); *Weeks v. United States*, 232 U.S. 383, 392 (1914) (the right of the State to make a warrantless search incident to arrest was "always recognized under English and American law . . . "). The authority to search incident to arrest, and the reasons for such searches, have been "repeatedly" affirmed. *Robinson*, 414 U.S. at 226. Throughout the series of cases in which the Court addressed the issue of the proper scope of a search incident to arrest, "no doubt has been expressed as to the unqualified authority of the arresting authority to



search the person of the arrestee." *Robinson*, 414 U.S. at 225.[4] Those cases establish that search incident to arrest is not only an exception to the warrant requirement but "reasonable" under the Fourth Amendment. *Robinson*, 414 U.S. at 225-26;[5] *accord Gustafson v. Florida*, 414 U.S. 260, 263-264 (1973).

The proper scope of a search incident to arrest is similarly well established. The arresting officer may search the person arrested in order to remove any weapons that the suspect might use to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, the arresting officer may search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. *Chimel v. California*, 395 U.S. 752, 762-763 (1969). Officers may also lawfully search the area within the arrestee's "immediate control." *Id.* at 763. When an occupant of an automobile has been arrested, the area within his control includes the entire passenger compartment of that automobile, including any

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[4] *Citing Carroll v. United States*, 267 U.S. 132 (1925); *Marron v. United States*, 275 U.S. 192 (1927); *Go-Bart v. United States*, 282 U.S. 344 (1931); *United States v. Lefkowitz*, 285 U.S. 452 (1932); *Harris v. United States*, 331 U.S. 145 (1947); *Trupiano v. United States*, 334 U.S. 699 (1948); *United States v. Rabinowitz*, 339 U.S. 56 (1950); *Preston v. United States*, 376 U.S. 364 (1964); *Chimel v. California*, 395 U.S. 752 (1969).

[5] Knowles concedes that the Iowa statutes authorizing custodial arrest for any offense, [*see* Iowa Code §§ 805.1(6), 804.7 (1995)], are constitutional. Pet. Br. at 23-24. Therefore, it is only the common-law authority to *search* that bears discussion; the power to *arrest* at common-law is not at issue in this case.

containers therein. *New York v. Belton*, 453 U.S. 454, 460-461 (1981).

A search incident to arrest is not limited by the offense which gave rise to the search. Rather, the Court has noted that the decision whether to search is "necessarily a quick ad hoc judgment" and has established a bright-line rule permitting a search even if it is apparent that no weapon or evidence of the crime would be found. *Robinson*, 414 U.S. at 235.

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment: that intrusion being lawful, a search incident to the arrest requires no additional justification.

*New York v. Belton*, 453 U.S. at 461, *quoting*, *United States v. Robinson*, 414 U.S. at 235.

It is beyond dispute that search incident to custodial arrest comports with the Fourth Amendment. Search contemporaneous with issuance of a citation is equally lawful where the officer has probable cause and statutory authority to make a custodial arrest. Under these circumstances, probable cause to arrest establishes the reasonableness of both searches incident to custodial arrest and those incident to citation.



## B. SEARCHES INCIDENT TO CITATION COMPLY WITH THE FOURTH AMENDMENT: THEY ARE *PER SE* REASONABLE; FURTHER, UNDER A BALANCING TEST, THE STATE'S INTERESTS IN PROTECTING OFFICERS AND PRESERVING EVIDENCE OUTWEIGH THE AFFECTED PRIVACY INTERESTS.

Searches incident to citation are *per se* reasonable under the Fourth Amendment; that reasonableness is not dependent on the relative strength of the State's need to search and the affected privacy interest. Even if a balancing test is applied, however, the State's interests greatly outweigh the impact of a search incident to citation upon a suspect's Fourth Amendment rights.

### 1. Searches incident to citation are a type of search incident to arrest and are *per se* reasonable as it is the existence of probable cause, and not the fact of custody, which justifies searches incident to arrest.

Searches incident to citation are merely a subcategory of search incident to arrest and are constitutional for the same reasons as are searches incident to custodial arrest. Probable cause to arrest is the critical factor giving rise to the reasonableness of both types of searches. Because Iowa Code section 805.1(4) requires probable cause to arrest, that statute complies with the requirements of the Fourth Amendment.

That it is probable cause to arrest which underlies the reasonableness of searches incident to arrest is supported by the Court's rulings which permit a search incident to arrest to *precede* custodial arrest so long as there is probable cause to arrest at the time of the search. *See Peters v.*

*New York*, 392 U.S. 40, 66-67 (1968) (search of burglary suspect prior to formal arrest was proper as the officer had probable cause to arrest at the time the search was made); *Rawlings v. Kentucky*, 448 U.S. 98, 111-12 (1980) (upholding a search of defendant even though the search preceded defendant's formal arrest, stating, "where the formal arrest followed quickly on the heels of the challenged search . . . we do not believe it particularly important that the search preceded the arrest rather than vice versa.")

In his concurring opinion in *Sibron*, Justice Harlan makes a strong case for the State's position that it is the presence of probable cause, and not the fact of custody, that justifies a search incident to arrest.

> Of course, the fruits of a search may not be used to justify an arrest to which it is incident, but *this means only that probable cause to arrest must precede the search. If the prosecution shows probable cause to arrest prior to a search of a man's person, it has met its total burden.* There is *no* case in which a defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me and searched my person, the search is invalid because he did not in fact arrest me until afterwards."

*Sibron*, 392 U.S. at 77 (Harlan, J., concurring) (emphasis added).

In *Whren*, the Court noted that the existence of probable cause to arrest is dispositive of the reasonableness of a search or seizure.

> For the run-of-the-mine case, which this surely is, . . . there is no realistic alternative to



> the traditional common law rule that probable cause justifies a search and seizure.
>
> Here the district court found the officers had probable cause to believe that petitioner had violated the traffic code. That rendered the stop reasonable under the 4th Amendment, and the evidence admissible. . . .

*Whren*, 517 U.S. at 819. Searches under section 805.1(4) are conditioned upon probable cause to arrest. Thus, under the rationale of *Whren*, searches under the statute are reasonable.

**2. The State's interest in searching incident to issuance of a citation outweighs the impact on suspects' privacy interests, particularly in Iowa where officers may elect in any case to make custodial arrests and contemporaneous searches.**

If the Court finds that searches incident to citation are not *per se* constitutional based upon probable cause to arrest, a balancing analysis is applied. *See Whren*, 517 U.S. at 816-17; *New York v. Class*, 475 U.S. 106, 116 (1986); *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). The outcome of the analysis is unchanged – Iowa Code section 805.1(4) fully complies with the Fourth Amendment.

**(a) The State's interests in searching suspects for officer safety and to preserve evidence are strong.**

The State's interest in searching suspects before release is very strong. Searches incident to citation advance the same interests as do searches incident to custodial arrest: protecting officer safety and preventing destruction of evidence. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Those interests are equally at stake in searches incident to citation and searches incident to arrest.

In weighing the competing interests, the Court considers whether the legislature authorized a particular police practice. Where, as here, a legislative body has authorized a search, the Court is "reluctant" to decide that the search is unreasonable. *United States v. Watson*, 423 U.S. 411, 416 (1976); *United States v. DiRe*, 332 U.S. 581, 585 (1948); *and cf. Illinois v. Krull*, 480 U.S. 340, 351-52 (1987).

The Court has previously recognized the dangers posed to police during automobile stops. *Maryland v. Wilson*, 519 U.S. 408, ___, 117 S.Ct. 882, 885 (1997) ("Regrettably, traffic stops may be dangerous encounters. In 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops."); *Pennsylvania v. Mimms*, 434 U.S. 106, 110-11 (1977) (noting the "inordinate risk confronting an officer as he approaches a person seated in an automobile."); *Adams v. Williams*, 407 U.S. 143, 148, n.3 (1972) (noting that according to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an



automobile, *citing* Bristow, Police Officer Shootings – A Tactical Evaluation, 54 Crim. L.C. & P.S. 93 (1963)); *New York v. Class*, 475 U.S. at 116 (noting the danger to officer safety when a suspect is seated in an automobile with possible access to a dangerous weapon); *Robinson*, 414 U.S. at 234 ("Nor are we inclined, on the basis of what seems to us to be a rather speculative judgment, to qualify the breadth of the general authority to search incident to lawful custodial arrest on an assumption that persons arrested for the offense of driving while their licenses have been revoked are less likely to possess dangerous weapons than are those arrested for other crimes."). In fact, the Court's concern with officer safety is so great that it has even permitted intrusion on the privacy interests of persons merely accompanying a suspect. *Maryland v. Wilson*, 519 U.S. at ___, 117 S.Ct. at 886 (holding that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop).

Investigatory stops pose a clear and present danger to law enforcement officers. The most recent statistics available from the Federal Bureau of Investigation report that in 1996, fifty-five officers were killed in the line of duty. Of those, eleven officers (or one-fifth of those killed) were slain while enforcing traffic offenses. Another twelve were killed while investigating suspicious persons or circumstances. Uniform Crime Reports, 1996, United States Department of Justice, Federal Bureau of Investigation, "Law Enforcement Officers Killed and Assaulted," p. 3. In contrast, during that same year only eight officers were killed by robbery suspects and three by suspects during "drug-related situations."

*Id.* A significant number of officer injuries are also attributable to traffic offenders: 4,333 (9%) of the 46,695 reported non-fatal assaults on officers in 1996 were committed by suspected traffic offenders. *Id.* at 65-66, 69.

It is not surprising that persons stopped for citable offenses would assault officers, attempt to escape, or destroy evidence. While Knowles attempts to portray all such cases as "minor" traffic stops, that is not in fact the case. Iowa permits the use of citations for even serious felonies.[6] Moreover, conviction on many "minor traffic offenses" can result in very serious penal and extrajudicial consequences.[7]

The mere fact that one is stopped and cited for a violation may pose a serious threat to offenders who have reason to fear being identified, such as persons with outstanding warrants, persons who (unbeknownst to the officer) are fleeing after committing other, more serious offenses,[8] or persons who are evading creditors or others.

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[6] Examples would include: second degree burglary and first degree theft, both punishable by up to ten years in prison and a fine of $500 to $10,000, *see* Iowa Code §§ 713.4, 714.2(1), 902.9(3) (1997); and, auto theft, punishable by imprisonment for up to five years and a fine $500.00 to $7,500.00, *see* Iowa Code §§ 714.1(2), 902.9(4) (1997).

[7] For example, in Iowa, driving while one's license is barred is an aggravated misdemeanor, carrying a penalty of not to exceed two years in prison and a fine of between $500 and $5,000 and an additional two to six year license bar. Iowa Code §§ 321.561, 321.555, 903.1(2), 321.555 (1995).

[8] For example, both serial killer Ted Bundy and terrorist Timothy McVeigh were apprehended after being identified during a "routine" traffic stop. *Bundy v. State*, 455 So.2d 330, 336 (Fla. 1984); Stephan Braun, "Trooper's Vigilance Led to Arrest of Blast Suspect," L.A. Times, A-1 (April 22, 1995) (convicted Oklahoma City bomber arrested after traffic stop).



In fact, initially the suspect may not know of what crime he is suspected. During that period of uncertainty, the incentive to destroy evidence or effect an escape will exist equally in cases which ultimately end in issuance of a citation as in those which end in custodial arrest. Thus, issuance of a "mere" citation, in fact, creates strong incentives for a suspect to flee or destroy evidence of the crime for which he was cited as well as evidence of other, as yet undetected, crimes.

**(b) The impact of section 805.1(4) on privacy interests is minimal.**

While the State's interest in searching is very strong, the impact of section 805.1(4) on suspects' privacy is limited. Iowa law enforcement officers have authority to make custodial arrests. Given that fact, no additional invasion of privacy results from a search of the same scope made incident to a citation rather than to arrest. *Cf. Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (the additional intrusion of asking a driver of already lawfully detained vehicle to get out of the vehicle is *de minimus*); *Maryland v. Wilson*, 519 U.S. 408, ___, 117 S. Ct. 882, 886 (1997) (the additional intrusion when a passenger in a lawfully stopped car is required to exit the vehicle is "minimal"). Searches incident to citation are actually much *less* intrusive than the available alternative of search incident to custodial arrest.

In fact, the practice of issuing citations is a reform aimed at minimizing the severity of warrantless intrusions on Fourth Amendment interests and limiting the length of pretrial detentions. *See, e.g.*, ABA Standards for Criminal Justice §§ 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985); Model Code of Pre-Arraignment Procedure § 120.2 (1975); LaFave, Search and Seizure: A Treatise on the Fourth Amendment, 3d ed., section 5.2(h).

**(c) Issuance of a citation combined with a contemporaneous search is less intrusive on suspects' privacy than is custodial arrest and search.**

The intrusion on privacy interests occasioned by a search incident to citation is much less than would result from an officer's election to make a custodial arrest and search. Given the State's strong interest in searching, that minimal intrusion is "reasonable" under the Fourth Amendment.

This Court has recognized as constitutionally "reasonable" some searches and seizures "significantly less intrusive than an arrest" – even when made in the *absence* of probable cause to search or seize. *Michigan v. Summers*, 452 U.S. 692, 697-698 (1981) (upholding the detention of a resident of a house during execution of a search warrant for the premises). *See also Terry v. Ohio*, 392 U.S. 1 (approving a weapons frisk for weapons as a justifiable response to an officer's reasonable belief that a suspect is armed and dangerous); *Adams v. Williams*, 407 U.S. 143 (1972) (approving the forcible seizure of a suspect to investigate an informant's tip that the suspect was armed



and carrying narcotics); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (special law enforcement problems confronted by roving border patrols were adequate to support vehicle stops based on the agents' awareness of specific articulable facts indicating the vehicle contained illegal aliens). *New York v. Class*, 475 U.S. at 118-19 (the Court noted that the detention of a suspect and limited search of his car was "far less intrusive than a formal arrest, which would have been permissible . . . under New York law . . . ").

The rationale of those cases is even more persuasive in Knowles' case. Section 805.1(4) requires probable cause and the intrusion upon citizens' privacy which results from search incident to arrest is actually less intrusive than the other available alternative, i.e., search incident to custodial arrest.

**3. The permissible scope of a search incident to citation is the same as for a search incident to custodial arrest; it is not limited to the scope of a *Terry* search.**

Petitioner argues that where police lack probable cause to *search*, searches incident to citation should be limited to a *Terry*[9] weapons sweep. However, search incident to citation is based upon probable cause to *arrest* and serves a function quite different from a *Terry* search. Thus, the limitations of *Terry* do not apply to search incident to citation.

The scope of a search must be strictly tied to and justified by the circumstances which make initiation of

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[9] *Terry v. Ohio*, 392 U.S. 1 (1968).

the search reasonable. Thus, the scope of a *Terry* search must be "strictly circumscribed by the exigencies which justify its initiation" – officer safety. Consequently, a search for weapons in the absence of probable cause to arrest must be limited to that which is necessary to discover weapons which might be used to harm the officer or others nearby and is less than a "full" search. *Terry*, 392 U.S at 25-26.

In contrast, search incident to arrest is a "'wholly different kind of intrusion" from a *Terry* search and serves a "quite different" purpose. *Robinson*, 414 U.S. at 228. There is a fundamental difference between a *Terry* protective frisk and a search incident to arrest, a distinction in purpose, character, and extent – probable cause to arrest. *Robinson*, 414 U.S. at 227-28. The bases for searches incident to arrest are two-fold: the need to disarm suspects for officer safety and the need to preserve evidence. *Id*. Those rationales also apply where a citation is issued in lieu of custodial arrest and justify searches incident to citation of the same scope as would be permitted if a custodial arrest were made.

The need to perform a more expansive search incident to arrest than in *Terry* situations arises from essential differences in the two types of encounters:

> An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its law obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows. The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person.



*Robinson*, 414 U.S. at 228, *quoting*, *Terry v. Ohio*, 392 U.S. at 25-26. Because of these essential differences, *Terry* affords no basis to carry over to a probable-cause arrest the limitations placed on a stop-and-frisk search permissible without probable cause. *Robinson*, 414 U.S. at 228. Issuance of a citation, like arrest, initiates a prosecution with attendant restrictions on freedom of movement. Thus, search incident to citation is a wholly different kind of intrusion from a *Terry* search.

The first justification for the authority to search incident to a lawful arrest is officer safety. *Robinson*, 414 U.S. at 234. That justification applies as well in cases where a citation is issued.

The Court in *Robinson* rejected the suggestion that the traditional scope of a search incident to arrest should be restricted on the "questionable" assumption that one arrested for a traffic offense is less likely to possess dangerous weapons than are those arrested for other crimes. Instead, the Court focused not on the nature of the crime but on the extended exposure which follows the taking of a suspect into custody and transporting him to the police station, as compared to the "relatively fleeting" contact resulting from a *Terry*-type stop. *Robinson*, 414 U.S. at 234-235.

Similarly, the scope of a search incident to citation should not be restricted to a *Terry* search. Like custodial arrest, issuance of a citation initiates a (possibly very serious) prosecution, with attendant restrictions on suspects' freedom, including the threat of possible future incarceration. Because a citation signals the start of a prosecution, it creates the same incentives to make a violent escape or destroy evidence as does a custodial

arrest. Further, although the contact between officers and suspects during issuance of a citation might be less extensive than where a custodial arrest is made, contact is much more extended than in a brief *Terry* stop. A citation also involves contact at very close range.

The Court has recognized that concern with officer safety is strongly present even absent custodial arrest. "If a suspect is 'dangerous', he is no less dangerous simply because he is not arrested." *Michigan v. Long*, 463 U.S. 1032, 1050 (1983).

> [I]f a suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to any weapons inside. [Citation omitted.] Or, . . . the suspect may be permitted to reenter the vehicle before the Terry investigation is over, and again, may have access to weapons. In any event, we stress that a Terry investigation . . . involves a police investigation 'at close range' [citation omitted] when the officer remains particularly vulnerable in part *because* a full custodial arrest has not been effected. . . .

*Michigan v. Long*, 463 U.S. at 1052 (emphasis in original). *Accord New York v. Class*, 475 U.S. at 116 (where in evaluating the reasonableness of the detention of a suspect and limited search of his car, which uncovered a gun, the Court noted the danger inherent in returning a suspect to his car and, thus, permitting him possible access to a dangerous weapon and the benefit of partial concealment provided by the car's exterior); *Pennsylvania v. Mimms*, 434 U.S. at 110 (recognizing the risk to officer safety when approaching a suspect seated in an automobile).



The Court has refused to make a case-by-case analysis of the danger to officer safety presented by custodial arrests. The authority to search does not depend upon the likelihood in a particular case that weapons would actually be found; neither is it of any moment that the officer did not have a subjective fear of the suspect or suspect that the suspect was armed. *Gustafson v. Florida*, 414 U.S. 260, 265-66 (1973). The Court should likewise decline to require a case-by-case determination of danger in the context of searches incident to citation.

The second justification for searches incident to arrest is to prevent destruction of evidence. That interest justifies an "automatic" search. *Michigan v. Long*, 463 U.S. 1032, 1049, n.14 (1983). While this interest does not exist in the *Terry* context, it is strongly present in cases where citations are issued. That difference dictates that the *Terry* limitations do not apply to searches incident to citation.

The need to preserve evidence is at least as great when a citation is issued as when a custodial arrest is made. The use of citations in Iowa is not limited to those types of offenses for which arguably there is little possibility that evidence will be uncovered.[10] The probability that evidence will be found is unrelated to the manner in which prosecution is initiated. Further, in both contexts, the suspect is made aware that charges are being pressed

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[10] Knowles argues that "there is no evidence a motorist could destroy to avoid prosecution for speeding." Pet. Br. at 12. However, no such categorial conclusion can be drawn. For example, identification may be raised as an issue at trial and there would often be evidence on the person or in his automobile which would be helpful in proving the identity of the driver.

and that officers might seek evidence to support those charges. There is, in fact, a special need to search where a suspect is cited and released. The fact that the suspect is released gives him access to any evidence which might exist and unfettered opportunity to hide or destroy it.

Professor LaFave rejects Knowles' argument that a *Terry*-type search marks the limit of searches incident to citations. LaFave notes that, although the citation process is currently used primarily for minor traffic offenses, there is no reason why citations should not be used for all minor offenses. He points out that the use of citations is "most desirable" and has been recommended in recent law reform efforts. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, 3d ed., § 5.2(h). *And see* ABA Standards for Criminal Justice sections 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985); Model Code of Pre-Arraignment Procedure section 120.2 (1975); Unif.R.Crim.P. 211, 10 U.L.A. 14 (1992). In fact, Iowa law exceeds the reforms recommended by Professor LaFave.

Reform would be impeded if officers are permitted to conduct only a *Terry*-type search when a citation is issued, "for then it would never be feasible to give a citation for any minor offense where there is no need for custody of the defendant . . . yet a need to acquire evidence from his person." He thus concludes that the "better view" is that a search is no less lawful when incident to an arrest not of a "custodial" nature. *Id.*

Professor LaFave finds support for his position in section 10-2.4 of the ABA standards (2d ed. rev. 1985) which provides that "the defendant's subsequent release on citation should not affect the lawfulness of any search



incident to the arrest."[11] He also points to the Model Code, which permits search incident to arrest [section 330.1] together with release on citation after arrest [section 120.2(2)], and to the commentary to the Uniform Rule 211(b)(3), which quotes the ABA position. LaFave, *supra* at n.153.

Some lower courts have begun to accept this position as well. *See State v. Greenslit*, 151 Vt. 225, 559 A.2d 672 (1989) (probable cause to arrest is the rationale which underlies search incident to arrest; thus the Fourth Amendment permits a search notwithstanding that a citation was issued in lieu of custodial arrest); *People v. Bland*, 884 P.2d 312 (Colo. 1994) (noncustodial arrest for an offense for which statute barred custodial arrest entitled police to make a search for evidence "equal in scope to a full search incident to a custodial arrest" although scope of search is tied to the offense for which the officer has probable cause to arrest).

LaFave's reasoning is particularly compelling in this case because Iowa law not only allows the use of citations

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[11] Knowles correctly points out that standard 10-2.3 of the 1986 ABA Standards contained language very similar to Iowa Code section 805.1(4) and that the standard has subsequently been amended. However, the standard as it now exists does not *prohibit* search incident to citation, it merely stops short of affirmatively advocating such searches. Searches incident to citation are clearly consistent with the reforms urged by the American Bar Association and not inconsistent with the current language of standard 10-2.3. These factors undoubtedly led to Professor LaFave's conclusion that the ABA Standards reflect his own view that searches incident to citation are permitted by the Fourth Amendment.

for all "minor" offenses, but also for more serious misdemeanors and even for most felonies. In those situations, the need to search for evidence and weapons is self-evident.

**4. A bright-line rule authorizing search incident to citation is necessary to ensure uniform application of the protections of the Fourth Amendment.**

Knowles' approach would require the Court to determine the constitutionality of searches on a case-by-case basis. This Court has flatly rejected any suggestion that there must be a case-by-case determination of whether a search incident to arrest was justified by one of the underlying reasons for the doctrine. Instead, the Court has found that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *Robinson*, 414 U.S. at 235; *Accord Gustafson v. Florida*, 414 U.S. at 266. The Court should also reject Knowles' suggestion that searches incident to citation be evaluated on a case-by-case basis.

While the Court has generally eschewed *per se* rules in the Fourth Amendment context, *see, e.g., Ohio v. Robinette*, 519 U.S. 33 (1996), it has not always done so, *Maryland v. Wilson*, 519 U.S. at ___, 117 S.Ct. at 885, n.1. The Court has been particularly willing to set forth bright-line rules in the context of decisions that must be made by officers in the field, including searches incident to arrest. *See, e.g., United States v. Robinson*, 414 U.S. 218



(1973) (search may be conducted incident to any custodial arrest); *Gustafson v. Florida*, 414 U.S. 260 (1973) (same); *New York v. Belton*, 453 U.S. 454 (1981) (bright-line rule establishing the scope of a search of a vehicle incident to arrest); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (officer as a matter of course may order the driver of a lawfully stopped vehicle to exit the vehicle); *Michigan v. Long*, 463 U.S. 1032 (1983) (a *Terry* search may include the driver of the car and the passenger compartment); *Maryland v. Wilson*, 519 U.S. 408 (1997) (police officer making a traffic stop may order passengers out of the vehicle pending completion of the stop).

The Court's repeated use of bright-line search rules may be explained by the purpose of the Fourth Amendment. As Professor LaFave has noted, Fourth Amendment doctrine is primarily intended to regulate the police in their day-to-day activities. LaFave, "Search and Seizure: A Treatise on the Fourth Amendment," 3d ed. § 5.2(c). Thus, search and seizure rules should be expressed in terms of bright-line rules which will be applied to all cases of a certain type, regardless of the factual circumstances presented in a particular case. LaFave cautions that "we must resist 'the understandable temptation to be responsive to every relevant shading of every relevant variation of every relevant complexity' lest we end up with 'a Fourth Amendment with all of the character and consistency of a Rorschach blot.' " *Id., quoting*, Amsterdam, Perspectives on the Fourth Amendment, 58 Minn.L.Rev. 349, 397-398 (1974).

A bright-line rule is particularly appropriate to searches incident to citation, which involve relatively

minor intrusions into privacy, occur with greater frequency than any other type of police search, and require officers to make difficult legal decisions of a type that virtually defy on-the-spot analysis. LaFave, *supra*, § 5.2(c). In such circumstances, the security guaranteed by the Fourth Amendment can only be realized if the police are acting under a clear set of rules which will make it possible in most cases to determine beforehand whether an invasion of privacy is justified in the interest of law enforcement. *Id.*

The decision to search incident to arrest or citation cannot be made with the degree of forethought and reflection possible in most other search decisions. Instead, the decision to search must be made immediately upon the, often unanticipated, decision to arrest or cite. The fact of arrest or citation gives rise to an immediate need to search because, at the moment of arrest or citation, the suspect is motivated to conceal, destroy or furtively abandon any incriminating evidence. At that moment also arises incentive to flee, with or without the use of a weapon. *LaFave, supra,* § 5.2(c). Because the decisions to cite or arrest and to search must be made quickly, frequently, and under an infinite number of factual situations, a bright-line rule is necessary to ensure that officers can accurately determine when searches are permitted, and when they are not. Only then can the protections afforded by the Fourth Amendment be uniformly and consistently applied in practice.



**5. Search incident to citation is conditioned upon probable cause to arrest; that standard is sufficient to curb police discretion and prevent discriminatory enforcement or random, suspicionless searches.**

Petitioner claims that section 805.1(4) authorizes random, suspicionless searches and will lead to discriminatory enforcement of the criminal code. That claim should be rejected. The existence of probable cause to arrest is the essential factor which curbs police discretion and ensures that the Fourth Amendment's protections will be provided to all suspects.

Knowles attempts to equate search incident to citation to general warrants and writs of assistance in colonial America and England. Pet. Br. at 5-6. This analogy is faulty: the critical and obvious difference is that a search incident to citation requires that the officer first have probable cause to make an arrest. That requirement is sufficient guarantee against the dangers of random, suspicionless searches which the Fourth Amendment was designed to prevent.

Further, unlike persons affected by general warrants and writs of assistance, traffic offenders control their own fate: their actions determine whether an officer may stop, cite and search them. Knowles and his amicus imply that it is virtually impossible to avoid violating one of the "myriad" traffic regulations. Pet. Br. 20; Amicus Brief of the A.C.L.U. 8-9. However, while it may be tempting to speed, for example, it is no more impossible to comply with that traffic law than it is impossible to comply with other laws. Surely, Petitioner and his amicus would not apply this same logic to income tax violations, petty theft

or other crimes which are widely believed to be pervasive in our society.

Next, Knowles contends that search incident to citation would expand the authority of officers to make warrantless searches, and thus violate the Fourth Amendment. However, Iowa's statute regarding search incident to citation does not expand officers' authority to search. Knowles concedes, as he must, that without that statute, officers who wished to search could simply make a custodial arrest and search incident thereto. Pet. Br. at 24. *See State v. Meyer*, 543 N.W.2d 876, 878 (Iowa 1996) *citing State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990) (officers are permitted "virtually unlimited discretion in deciding when to make an arrest, issue a citation, or give a warning.").

In reality, any expansion in the authority of Iowa peace officers to search results, not from section 805.1(4), but from Iowa Code sections 804.1(6) and 804.7 (1995), which authorize officers to make custodial arrests for any public offense. Knowles did not, however, raise a Fourth Amendment challenge in the district court to Iowa's statutory authorization of custodial arrest for speeding. The Iowa Supreme Court therefore deemed that issue waived. J.A. 33. He does not challenge that section in this proceeding; in fact, he concedes that a custodial arrest would be constitutional. Pet. Br. at 24-25.

Moreover, any such claim would be futile. In *Whren*, the petitioner argued that some traffic stops, even if based upon probable cause, violated the Fourth Amendment. In dicta, the court noted that, "we are aware of no principle that would allow us to decide at what point a code of law becomes so expansive and so commonly



violated that [the] infraction itself can no longer be the ordinary measure of the lawfulness of enforcement. And even if we could identify such exorbitant codes, we do not know by what standard (or by what right) we would decide, . . . which particular provisions are sufficiently important to merit enforcement." *Whren*, 517 U.S. at 818-19.[12]

Knowles also asserts that "Iowa's search incident to citation statute provides police with no standards or guidance as to when and against whom it should be invoked. A police officer making a traffic stop has complete discretion to search or not to search." Pet. Br. at 23-24. In this regard, Petitioner fails to make a principled distinction between a search incident to custodial arrest, which Petitioner concedes is constitutional,[13] and a search incident to citation.

An officer making a custodial arrest, like an officer making a search incident to citation, has discretion as to whether or not to actually search. Notwithstanding that discretion, the Court has never placed any restraints on an officer's discretion to conduct a search incident to custodial arrest. To the contrary, the Court has refused to limit officers' discretion to make a stop or an arrest,

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[12] The State's power to authorize custodial arrest even for *malum prohibitum* offenses of a type which some might deem minor is supported by common practice. One recent commentator has determined that officers have "unfettered discretion" to arrest for traffic offenses in twenty-six states and can arrest "subject to minimal constraints" in an additional sixteen states. Janet Koven Levit, "Pretextual Traffic Stops: United States v. Whren and the Death of Terry v. Ohio," 28 Loy. U. Chi. L.J. 145, 152 (1996).

[13] Petitioner's Brief at 8-9, 24.

*Whren*, 517 U.S. at 806, or to search, *Robinson*, 414 U.S. at 235-36.

An argument similar to Knowles' was raised, and rejected, in *Whren*. There, in dicta, the Court noted that probable cause affords the " 'quantum of individualized suspicion' necessary to ensure that police discretion is sufficiently constrained." *Whren*, 517 U.S. at 817-18, *quoting, United States v. Martinez-Fuerte*, 428 U.S. 543, 560 (1976) and *Delaware v. Prouse*, 440 U.S. 648, 654-655 (1979).

Knowles gives no valid reason why that discretion should be limited where a citation is issued but not where a custodial arrest is made. Furthermore, limiting officers' discretion to search incident to citation would not have any appreciable effect on officer discretion. Officers would retain discretion to stop and to make custodial arrests and searches.

Petitioner's proposal would have little or no effect upon the number of searches conducted pursuant to traffic stops and would actually require officers to make more severe intrusions into suspects' freedom by requiring custodial arrests. If search incident to citation is deemed to violate the Fourth Amendment, the unfortunate effect will be to create incentive for officers who fear for their safety or for the destruction of evidence to make custodial arrests where they might otherwise have simply issued a citation. This Court has previously rejected such a countereffective interpretation of the Fourth Amendment. *California v. Acevedo*, 500 U.S. 565, 574-575 (1991) (if police know that they may open a bag only if they search the entire car, they may search more extensively than they otherwise would).



Petitioner attempts to compensate for the weakness in his analysis by suggesting that "the requirement of an arrest as a predicate to a search will at least temper the officer's discretion because the required documentation [of a custodial arrest] will allow assessment of how and against whom this discretion is exercised." Pet. Br. at 24. That argument is unpersuasive.

First, Petitioner does not elaborate on the type of documentation which would be created where a custodial arrest and search are made or how any such documentation would protect a suspect's Fourth Amendment rights. Second, if Knowles is suggesting that the time required to effect a custodial arrest might act as a factor limiting the number of arrests which would be made for minor offenses, that suggestion is both ineffective and unprincipled.

Knowles' proposal is ineffective as it ignores the reality that even if a custodial arrest is initially made, the suspect could be released on citation immediately after a search is conducted. *See* Iowa Code section 805.1(1) (authorizing issuance of citations in lieu of continued custody in situations where a custodial arrest had already been made). His proposal is also unprincipled. The practice of searching incident to citation must stand or fall on its reasonableness; the number of such searches conducted is simply irrelevant to the analysis.

Knowles' ultimate objection is that section 805.1(4) permits discriminatory law enforcement. In *Whren*, this Court rejected a similar argument in the context of allegedly pretextual traffic stops. *Whren*, 517 U.S. at 813. The court has also rejected that argument in the context of searches incident to custodial arrest for minor offenses.

*Robinson*, 414 U.S. at 234-35; *Gustafson*, 414 U.S. at 263-264. Petitioner has not demonstrated how the danger of discriminatory law enforcement practices in the context of search incident to citation is different from, or greater than, the danger of pretextual stops or pretextual arrests.

Ultimately, the potential for discriminatory law enforcement, while a grave concern, is simply a problem for which the Fourth Amendment is not the proper remedy. While the Constitution prohibits selective enforcement of the law based upon considerations such as race, the constitutional basis for objecting to deliberately discriminatory enforcement of the laws is the Equal Protection Clause rather than the Fourth Amendment. *Whren*, 517 U.S. at 813.

Should the alleged potential for discriminatory application of the search incident to citation doctrine be realized, the best remedy lies in state and federal legislation and police policy guidelines. Non-judicial processes are better suited to determining the precise scope of any problem and to tailoring an appropriate remedy. Among the nearly infinite number of non-judicial responses should discriminatory enforcement become a problem are: police regulations or legislation to limit the offenses for which search incident to citation is authorized or to limit the circumstances under which such searches may be carried out; citizen review boards of police search and seizure actions; and, civil actions for damages. *See Whren v. United States* and Pretextual Traffic Stops: The Supreme Court Declines to Plumb Collective Conscience of Police, Christopher R. Dillon, 38 B. C. L. Rev. 737, 764-70 (1997).



Knowles has failed to carry his burden to show that Iowa Code section 805.1(4) can never be constitutionally applied. The statute fully complies with the Fourth Amendment as it conditions search upon probable cause to arrest and statutory authorization to make a custodial arrest. Searches conducted under section 805.1(4) are a type of search incident to arrest and are *per se* reasonable. Alternatively, such searches are reasonable because the State's strong interests in searching cited suspects to protect officer safety and prevent destruction of evidence outweigh the minimal intrusion on Fourth Amendment interests. Therefore, Knowles' facial challenge to Iowa Code section 805.1(4) fails.

## III. TO THE EXTENT THAT PETITIONER CHALLENGES IOWA CODE SECTION 805.1(4) AS IT APPLIES IN HIS CASE, THE SEARCH COMPLIED WITH THE FOURTH AMENDMENT AND, EVEN IF IT DID NOT, THE EXCLUSIONARY RULE DOES NOT APPLY TO THE FRUITS OF THE SEARCH AS THE OFFICER RELIED IN GOOD FAITH ON THE VALIDITY OF THE STATUTE.

It is the State's position that Knowles has not raised a challenge to Iowa Code section 805.1(4) as it applies to him; rather, he has raised only a facial challenge to the statute. If his brief can be read as challenging the statute as applied, any such claim lacks merit for two reasons. First, as shown above, searches under the statute are based upon probable cause to arrest and are, therefore, valid in every case. Second, if the search did violate the Fourth Amendment, the exclusionary rule does not apply

as the officer searched in good faith reliance on the statute authorizing the search.

### A. THE SEARCH OF KNOWLES' CAR WAS A PROPER SEARCH INCIDENT TO ARREST AS IT WAS BASED UPON PROBABLE CAUSE TO ARREST.

Knowles has failed to show that the search of his car, which led to the discovery of marijuana, violated the Fourth Amendment. Knowles does not contest that the officer had probable cause to arrest him for speeding and the record clearly establishes that fact. J.A. 12-14. As shown above, the existence of probable cause, standing alone, was sufficient to permit the officer to search Knowles and his car.

### B. EVEN IF THE SEARCH OF KNOWLES' CAR VIOLATED THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE DOES NOT APPLY AS THE OFFICER SEARCHED IN GOOD FAITH RELIANCE ON IOWA CODE SECTION 805.1(4) WHICH AUTHORIZED THE SEARCH.

Further, even if the search in this case violated the Fourth Amendment, the fruits of the search should not be excluded.

Officer Cook searched Knowles' car in good faith reliance on an Iowa statute, Iowa Code section 805.1(4). That reliance was reasonable: section 805.1(4) expressly authorizes search incident to issuance of a citation in lieu of arrest where the search would be constitutional if made pursuant to arrest. In addition, the officer had



probable cause to make an arrest and could do so under Iowa law. Significantly, on the date of the stop in this case, the Iowa Supreme Court had upheld searches in the face of Fourth Amendment challenges, finding that the searches were valid searches incident to citation. *See* Iowa Code § 805.1(4) (1995); *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996); *State v. Cook*, 530 N.W.2d 728, 732 (Iowa 1995).

Thus, even if this Court were to accept the claim that Iowa Code section 805.1(4) violates the Fourth Amendment, the seized evidence is not subject to exclusion[14] as the searching officer relied in good faith on a statute which authorized the search. *Michigan v. De Fillippo*, 443 U.S. 31, 40 (1979); *Illinois v. Krull*, 480 U.S. 340 (1987). *See also United States v. Leon*, 468 U.S. 897, 920-922 (1984) (The exclusionary rule does not apply when the officer reasonably relied on an invalid search warrant); *Arizona v. Evans*, 514 U.S. 1 (1995) (exclusionary rule does not apply where erroneous information leading to search resulted from clerical error of court employees).

The reasons for the exclusionary rule do not apply where the *legislature* erred in authorizing unconstitutional warrantless searches. The suppression of evidence obtained by an officer relying on a statute would have little deterrent effect, which is the "prime purpose" of the exclusionary rule. *Krull*, 480 U.S. at 347-349. The exclusionary rule was designed to deter police misconduct, not

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[14] The exclusionary rule was first developed in Iowa. *State v. Sheridan*, 96 N.W. 730 (1903). Eleven years later, this Court adopted a federal exclusionary rule. *Weeks v. United States*, 232 U.S. 383 (1914).

that of legislators. *Id.* at 350-351. Invalidation of the statute, not the exclusion of evidence, is the greatest deterrent to unconstitutional legislation. *Id.* at 352.

> The purpose of the exclusionary rule is to deter unlawful police action. No conceivable purpose of deterrence would be served by suppressing evidence which, at the time it was found . . . , was the product of . . . a lawful search. To deter police from enforcing a presumptively valid statute was never remotely in the contemplation of even the most zealous advocate of the exclusionary rule.

*De Fillippo*, 443 U.S. at 38, n.3. As noted in *Krull*, cases in which the Court applied the exclusionary rule to the fruit of searches carried out in reliance on unconstitutional statutes did not involve assertion of a good faith exception to the exclusionary rule. Those cases also differed from this case in that the statutes in question authorized warrantless searches without probable cause. *Krull*, 480 U.S. at 355, n.12.

In the case at bar, Iowa Code section 805.1(4) requires officers to have probable cause to arrest, authorizes a less intrusive alternative to custodial arrest, and then permits the officer to search *if he could have searched had he chosen to arrest*. Thus, section 805.1(4) is consistent with *De Fillippo* in that it does not authorize officers to search in investigations where they otherwise could not search; rather, it allows officers to reserve their existing right to search incident to arrest while at the same time authorizing a less intrusive means of commencing the prosecution process.



"Because the exclusionary rule precludes consideration of reliable, probative evidence, it imposes significant costs: it undeniably detracts from the truthfinding process and allows many who would otherwise be incarcerated to escape the consequences of their actions." *Pennsylvania Board of Probation and Parole v. Scott*, ___ U.S. ___, 118 S. Ct. 2014, 2020 (1998). This "costly toll" on the law enforcement and adjudicative goals should not be imposed unless its imposition would significantly deter unconstitutional searches. *Id.* The exclusionary rule only applies in "those instances where its remedial objectives are thought most efficaciously served," *Arizona v. Evans*, 514 U.S. at 11; *Pennsylvania Board of Probation and Parole v. Scott*, ___ U.S. at ___, 118 S. Ct. at 2023 (Souter, J., dissenting).

As held in *Krull*, there is little or no deterrence where evidence is excluded because of an unconstitutional statute. Further, there are little or no incremental benefits to be gained from "punishing" officers for issuing a citation rather than taking the offender into custody. In rural states like Iowa, where the 99 county courthouses and jails are often many miles apart, custodial arrest of drivers imposes a significant burden on law enforcement and the arrested driver. The core values of the Fourth Amendment are further impinged by a rule forcing officers to engage in a custodial arrest in order to avoid after-the-fact litigation over measures taken to protect themselves in the fluid and dangerous situations that occur in automobile stops based on probable cause of a crime.

Any challenge to Iowa Code section 805.1(4) as it applies to Knowles would be groundless. Even if the record established that the search of Knowles' car violated the Fourth Amendment, the exclusionary rule

would not apply. As a result, Knowles' convictions should be affirmed.

## CONCLUSION

Knowles' convictions should be affirmed.

Respectfully submitted,

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## IN THE SUPREME COURT OF IOWA

No. 212/96-1426

Filed September 17, 1997

STATE OF IOWA,

Appellee,

vs.

PATRICK KNOWLES,

Appellant.

---

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott and Dale B. Hagen, Judges.

Defendant convicted of possession of drug paraphernalia in violation of local ordinance appeals via grant of discretionary review and challenges evidentiary rulings allowing evidence of a marijuana pipe obtained by a search incident to the issuance of a traffic citation. **AFFIRMED.**

Maria Ruhtenberg of Paul Rosenberg & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and Christine Branstad, Assistant County Attorney, for appellee.

Considered by Harris, P.J., Carter, Andreasen, and Ternus, JJ., and Schultz,* S.J.

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*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (1997).

**PER CURIAM.**

Defendant, Patrick Knowles, was convicted of possession of drug paraphernalia in violation of a local ordinance of the City of Newton. He appeals via grant of discretionary review and challenges evidentiary rulings that allowed evidence of a marijuana pipe that had been obtained by a search of his person and automobile incident to the issuance of a traffic citation. Defendant divides his grounds for reversal into three contentions: (1) the lack of probable cause to search under the Fourth Amendment to the federal constitution; (2) the invalidity of a purported statutory grant of authority to search based on the issuance of a traffic citation; and (3) the contention that it was unreasonable to detain the defendant after the issuance of the citation had been completed. Because we find that the controlling issues of law have been determined adversely to appellant in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we affirm the judgment of the district court.

We need not consider defendant's first contention as existing separate and distinct from the second. The State does not contend that there was probable cause to search under the warrant standards of the Fourth Amendment. Defendant was stopped by police for driving at an excessive speed. There were no circumstances indicating that evidence of crime existed on his person or in his automobile. The officer's election to search his person and his car was based solely on the perceived authority to search conferred by Iowa Code section 805.1(4) (1995). We thus proceed to the consideration of defendant's second contention.



We have consistently interpreted section 805.1(4) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. *State v. Meyer*, 543 N.W.2d 876, 879 (Iowa 1996); *State v. Becker*, 458 N.W.2d 604, 607 (Iowa 1990). In *Doran* we upheld this statutory grant of authority to search in the face of challenges based on the Fourth Amendment and article I, section 8 of the Iowa Constitution. Defendant urges us to reconsider our *Doran* holding, but we decline the invitation.

Defendant's final argument, based on an alleged unreasonable detention following the issuance of the citation is without merit. The further detention was for purposes of making the search, which we have found to have been lawful under section 805.1(4). We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

**AFFIRMED.**

Supreme Court, U.S.
FILED
SEP 25 1998
OFFICE OF THE CLERK

No. 97-7597

In The

# Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

*Petitioner,*

vs.

STATE OF IOWA,

*Respondent.*

**On Writ Of Certiorari To The Supreme Court Of Iowa**

## PETITIONER'S REPLY BRIEF

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## ARGUMENT

### I. THE INTRUSION ON THE CITIZENRY SUFFERED DURING A SEARCH INCIDENT TO CITATION FAR OUTWEIGHS THE STATE'S NEED TO CONDUCT SUCH SEARCHES.

The reasonableness of a search depends on a balance between the state's need to search and "the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignioni-Ponce*, 422 U.S. 873, 878 (1975).[1] The Respondent argues that the intrusion of a search incident to a citation is minimal compared to the state's interests in conducting such searches. However, a full-blown search is far from a minimal intrusion. In addition, the authority police officers have in Iowa is so expansive that it will affect hundreds of thousands of otherwise law-abiding citizens in Iowa, and, if upheld against constitutional challenge here, it will affect millions nationwide.

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[1] The concept that Fourth Amendment reasonableness standards require the balancing of the necessity of the search against the invasion it entails grew out of this Court's decision in *Camara v. Municipal Court*, 387 U.S. 523, 534-38 (1967). ("Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."). The "balancing test" has primarily been employed to determine the reasonableness of governmental assertions of bright-line search authority. *E.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 560-61 (1976) (border searches); *Chandler v. Miller*, 117 S. Ct. 1295, 1301 (1997) (drug taking of political candidates); *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (public school searches of students).

### A. The Search Incident to Citation is a Severe Intrusion that Will Affect Millions of Otherwise Law Abiding Citizens.

Police officers in the State of Iowa are authorized to search motorists and their vehicles based only upon issuance of a traffic ticket. Each year in Iowa alone, officers have well over 400,000 opportunities to subject citizens to such searches.[2] Projecting these figures nationwide, the number of traffic citation encounters giving police absolute authority to search would certainly be near 40 million. The state characterizes this as a minimal intrusion.

The logic the state enlists to reach this conclusion is that these otherwise law-abiding citizens ought to be grateful they were not arrested and then searched. This argument sounds more like extortion than legal reasoning.

The fact is that no person will feel anything but extreme embarrassment and humiliation at having every inch of his or her vehicle searched on the basis of a traffic ticket. Furthermore, even the knowledge that the police have such an authority will inflict grave insult on citizens who rightfully expect their personal security and privacy

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[2] Iowa Department of Transportation, Driver History Data Base shows the following annual number of traffic citation convictions in the State of Iowa: 1994: 409,160; 1995: 442,307; and 1996: 449,987. In Iowa, police officers may cite and search for any offense from jaywalking to equipment violations to speeding. *See* Robert R. Rigg, *The Objective Mind and "Search Incident to Citation,"* 8 B.U. Pub. Int. L.J. (forthcoming Spring 1999).



to be off limits to such baseless government search expeditions.

One need not be a personal victim of government abuse to suffer injury. Every election day a huge percentage of Americans do not vote, but try telling them they cannot. So too here, the damage caused by the judicial approval of such a search will far exceed the injury resulting from the actual searches.

The practice of issuing citations in lieu of arrest is designed to minimize the intrusion on violators. Respondent admits that "the practice of issuing citations is a reform aimed at minimizing the severity of warrantless intrusions on Fourth Amendment interests and limiting the length of pretrial detentions." Respondent's Brief, p. 28 (citing ABA Standards for Criminal Justice §§ 10-2.1, 10-2.2, 10-2.3 (2d ed. rev. 1985)). However, the authorization of a search incident to those citations eliminates the purpose of the policy. When arrested, a person has been seized and is in custody and will be taken to jail. A search following such a detention is hardly more intrusive than the arrest itself. Once an arrest is made, the further intrusion of a search is minimal. *United States v. Robinson*, 414 U.S. 218, 237-39 (1973) (J. Powell, concurring). By contrast, "the detention of a motorist pursuant to a traffic stop is presumptively temporary and brief." *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). An ensuing search would be extremely intrusive compared to the brief detention associated with a traffic stop.

A search that includes the examination and probing of the clothing, purses, briefcases, bags, and all parts of

the vehicle cannot, by any definition, be termed a "minimal intrusion." Every motorist is eligible for such a search based on *any* violation of the law, whether that violation be a traffic infraction or the most serious felony.[3] The search incident to citation, therefore, cannot be considered a minimal intrusion on the privacy interests of the American people.

### B. The State's Interests Will Not be Furthered by a Search Incident to a Citation.

The state's claim of the threat of death or serious injury associated with the act of citing a traffic offender is an extremely cynical and statistically unsupported position. The statistics cited by Respondent do not accurately reflect how officers will be able to protect themselves by seizing weapons. Of the 4,333 officers assaulted in 1996, 3,091 were assaulted by using "personal weapons" described as "any part of the body – hands, fists, feet, etc. – which can be employed as a weapon." Uniform Crime Reports, 1996, United States Department of Justice, Federal Bureau of Investigations, "Law Enforcement Officers Killed and Assaulted," pp. 1, 69. Police cannot prevent such assaults by searching because these "personal weapons" are not seizable. In fact, the only way to prevent such assaults is to effect a custodial arrest.

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[3] It is common knowledge that citations are not generally used to initiate prosecutions for serious offenses. Also, the existence of probable cause to arrest for many major crimes establishes cause to search. Under *Carroll v. United States*, 267 U.S. 132 (1925), police already have authority to search a vehicle without a warrant in those circumstances.



In 1996, 1,242 officers were assaulted using some type of weapons that can be seized. *Id.* at 69. Eleven officers were killed during traffic stops and pursuits in 1996. *Id.* at 29. These numbers are very small when compared to the number of traffic stops officers make each year. In Iowa no police officer was feloniously killed from 1987 to 1996. *Id.* at 23. However, officers stopped and cited approximately 4 million people during that same time period.

Any time an officer is killed in the line of duty it is a tragedy. However, the law cannot protect officers from every eventuality as long as the Bill of Rights exists. A free society will not long survive when law enforcement tactics are justified and judicially approved on the groundless fear that every motor vehicle contains a Ted Bundy or Timothy McVeigh. Respondents Brief, p. 26 n.8. In fact, Respondent's brief contains many such cynical examples.[4]

Police already have ample authority to safely effectuate a traffic stop. If the officer has probable cause, he may search the motorist and the vehicle at the scene. *Carroll v.*

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[4] For example, the state argues that the authority to search during a traffic stop is necessary to protect officers from all motorists and allow suspicionless searches because motorists might have outstanding warrants, are evading "creditors or others," or do not even know they are suspects to a crime. Respondent's Brief, pp. 26-27. The state does not explain how this authority to search will protect an officer from a person who is trying to evade creditors or anyone else. It is unclear why one evading creditors would feel the need to attack a police officer. The state also does not explain why a person would become violent if he does not even know he is suspected of a crime.

*United States*, 267 U.S. 132, 153 (1925). The police may conduct a full search incident to a custodial arrest, including the interior of the vehicle. *United States v. Robinson*, 414 U.S. 218, 235 (1973); *New York v. Belton*, 453 U.S. 454, 460 (1981). The officer may seize evidence that is in plain view. *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971). The officer can pat down the motorist and the vehicle upon suspicion that the person is armed and dangerous. *Terry v. Ohio*, 391 U.S. 1, 30 (1968); *Michigan v. Long*, 463 U.S. 1032, 1049 (1983). The officer can order the driver and the passengers out of the vehicle while he has them detained during a traffic stop. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977); *Maryland v. Wilson*, 117 S. Ct. 882, 884 (1997). The officer can detain the motorist to secure consent to search the vehicle. *Ohio v. Robinette*, 117 S. Ct. 417, 421 (1996). Any further authority to search based on the issuance of a traffic citation will not provide police officers with additional tools to protect themselves that they do not already have.

The state also claims that the authority to search incident to a citation is necessary to preserve evidence. During a traffic stop like the one at issue in this case, there can be no further evidence of the infraction. The officer obtained sufficient evidence and cited Knowles prior to the search. (App. p. 18). That part of the stop was finished. The officer needed no further evidence of speeding. (App. pp. 18-19). No further identifying information from Knowles was required to issue the citation. Therefore, the state's interest to preserve evidence of the traffic infraction is not an issue.



However, the Respondent also justifies the search on the state's desire to preserve evidence of some yet undetected crime. Respondent's Brief, p. 27. Such a search should not be permitted based on the possibility that the officer may discover evidence of a crime that has yet to be detected. A search incident to arrest is not meant to be a fishing expedition. The Respondent apparently requests the Court to expand this exception to allow the officer to search without making an arrest for the purpose of seizing any evidence he can find. This is not a valid state interest. The level of intrusion that the individual would suffer greatly outweighs the state's desire to stumble on to evidence of an undetected crime.

## II. A SEARCH INCIDENT TO ARREST REQUIRES A CUSTODIAL ARREST, NOT JUST PROBABLE CAUSE TO MAKE A CUSTODIAL ARREST

The State's main argument in support of Iowa's search incident to citation statute is that such a search is a judicially recognized or logical subspecies of search incident to arrest and is therefore *per se* reasonable under the Fourth Amendment. This is true, the state maintains, because it is the existence of probable cause to arrest, and not an actual custodial arrest, which justifies the search. However, neither jurisprudence nor logic support this claim.

The Respondent has misconstrued 25 years of United States Supreme Court doctrine by asserting that it is probable cause to arrest, not the arrest itself, that justifies a search incident to arrest. Respondent's Brief, pp. 14, 20, 21-23, 29, 39, 45. The search incident to arrest exception to

the warrant requirement has always been based on a custodial arrest.

In *United States v. Robinson*, 414 U.S. 218, 235 (1973), this Court held that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search. . . . " The principle is again stated in *Gustafson v. Florida*, 414 U.S. 260, 265 (1973): "It is sufficient that the officer had probable cause to arrest . . . and that he lawfully effectuated the arrest, and placed the petitioner in custody."

This Court's decision in *Michigan v. DeFillippo*, 443 U.S. 31, 35 (1979), cited *Robinson* as establishing the following proposition: "The constitutionality of a search incident to an arrest does not depend on whether there is any indication that the person arrested possesses weapons or evidence. The fact of a lawful arrest, standing alone, authorizes a search." Although a 6-3 decision, not one Justice in *DeFillippo* disputed the majority opinion's characterization of the *Robinson* holding.

This Court refused to hold that a full *Chimel*[5] search is justified without a formal arrest. *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). The Court did, however, uphold a full search of the interior of an automobile only when the

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[5] In *Chimel v. California*, 395 U.S. 752, 763 (1969), the Court established the scope of a search incident to arrest as being a search of the arrestee's person and the area within his immediate control.



officer "has made a lawful *custodial* arrest of an occupant of the automobile." *New York v. Belton*, 453 U.S. 454, 460 (1981) (emphasis added). In *United States v. Edwards*, the Court explained that the search incident to arrest exception to the warrant requirement "has traditionally been justified by the reasonableness of searching for weapons, instrumentalities of escape, and evidence of crime when a person is taken into *official custody and lawfully detained.*" 415 U.S. 800, 802-03 (1974) (citing *Robinson*, 414 U.S. at 235) (emphasis added).

The defendant in *Michigan v. Long*, 463 U.S. 1032, 1035 n.1 (1983), could have been arrested for a number of crimes, but he was not. The Court did not decide that the police may conduct a search as broad as a *Belton* search when there is probable cause to arrest but no arrest is made. *Id.*

The justifications for the exception support the proposition that it is the peculiar features of a custodial arrest, and not the mere existence of probable cause to arrest, that necessitates the incidental search. First, the officer faces greater danger during extended exposure to a suspect while taking him into custody than when the suspect is merely briefly detained. *Robinson*, 414 U.S. at 234-35. Second, "[w]here there is no formal arrest . . . a person might well be less hostile to the police and less likely to take conspicuous, immediate steps to destroy incriminating evidence. . . . " *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). Third, once an arrest has been made, an ensuing search is not any more intrusive. *Robinson*, 414 U.S. at 237-39 (J. Powell, concurring). None of these justifications exist when a citation is issued in lieu of arrest.

In support of its position that probable cause to arrest alone justifies a search, the state relies on several of this Court's decisions in which a search was held reasonable although it preceded a custodial arrest. *Rawlings v. Kentucky*, 448 U.S. 98, 111-12 (1980), and *Sibron v. New York*, 392 U.S. 40, 66-67 (1968), found no constitutional significance in the fact that the questioned search occurred prior to a custodial arrest. The state thus concludes that the decisive factor justifying the search is probable cause to arrest.

The *Rawlings* and *Sibron* decisions, however, deal only with the issue of the timing of the search incident to an arrest. They do not address or even shed light on circumstances where the police officer issues a speeding ticket and no custodial arrest is made, nor contemplated.

In this case, although the officer had probable cause to arrest Knowles for speeding, he did not. (App. p. 14). He did not intend to arrest him for speeding as evidenced by the fact that he issued a citation. (App. p. 14). Knowles was arrested for the fruits of the search. Had this Court intended the *Sibron* holding to require only probable cause to arrest to justify a search incident to arrest, it would not have required a custodial arrest five years later in *Robinson* and *Gustafson*. Similarly, had the Court intended the *Rawlings* decision to broaden the search incident to arrest exception to only require probable cause to arrest, it would not have held one year later in *Belton* that a custodial arrest was a condition precedent to searching the passenger compartment of a vehicle incident to that arrest.



## III. THE STATE OF IOWA HAS WAIVED ITS RIGHT TO RELY ON THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE BY FAILING TO RAISE THIS CLAIM IN THE IOWA COURTS.

The State has waived its right to rely on the good faith exception to the exclusionary rule by its failure to raise the issue before the trial court and Iowa Supreme Court. The rules of procedure in this Court and in the Iowa courts require that the issue be preserved by asserting it at the inception of the litigation and not for the first time before this Court more than two years after Knowles filed his motion to suppress.

The Iowa Supreme Court strictly adheres to the "error preservation rule," which forbids litigants from raising issues on appeal that have not been presented to the trial court. *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997); *State v. Eames*, 565 N.W.2d 323, 326 (Iowa 1997); *Patchette v. State*, 374 N.W.2d 397, 401 (Iowa 1985).

Additionally, Iowa has no "plain error" rule that allows appellate courts to decide issues not raised below. *Lamphere v. State*, 348 N.W.2d 212, 218 (Iowa 1984); *State v. Miles*, 344 N.W.2d 231, 233 (Iowa 1984).

The Iowa error preservation rule applies with equal force to constitutional claims. *State v. Kinkead*, 570 N.W.2d 97, 102 (Iowa 1997); *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994); *Patchette*, 374 N.W.2d at 401.

The State failed to urge the good faith issue before the trial court, thus, it would have been waived had it

been argued before the Iowa Supreme Court.[6] However, the State did not raise the issue there either.

Good faith is now raised for the first time in Respondent's brief. This Court is no less strict in refusing to address issues not previously asserted: " 'Ordinarily, this court does not decide questions not raised or resolved in the lower court[s].' " *Taylor v. Freeland & Kranz*, 503 U.S. 638, 645-46 (1992) (quoting *Youakim v. Miller*, 425 U.S. 231, 234 (1976)). *Taylor* alludes to "unusual circumstances" that warrant deviation from the rule. However, the good faith exception for reliance on legislation first announced in *Illinois v. Krull*, 480 U.S. 340 (1987), gave the State nearly 10 years notice of its availability. Additionally, since the good faith exception to the exclusionary rule goes only to the remedy available for a Fourth Amendment violation, the issue cannot be viewed as an essential and necessary component of the substantive issue before this Court. *See Ohio v. Robinette*, 117 S.Ct. 417, 420 (1996); *Vance v. Terrazas*, 444 U.S. 252, 258, n.5 (1980).

Finally, the State's failure to raise the good faith exception in the Iowa courts likely caused prejudice to Knowles because he could have sought to exclude the fruits of the search under Iowa constitutional and statutory search and seizure law. *State v. Thomas*, 540 N.W.2d

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[6] For instance, the Iowa Supreme Court refused to consider Knowles's claim that the statutory authorization for custodial arrest for speeding was an unconstitutional seizure, as Knowles did not raise it in his motion to suppress in the trial court. (App. p. 33). That issue was therefore waived. The court would have considered any good faith argument first raised in the Iowa Supreme Court waived as well.



658, 666 (Iowa 1995) ("We note . . . that we have not yet recognized a good faith exception to the exclusionary rule under the Iowa Constitution, article I, section 8 . . . "); Iowa R. Crim. P. 11 (providing for the exclusion of evidence unlawfully searched for or seized). The avoidance of such prejudice is certainly one of the justifications underlying the error preservation rule, and there are no "unusual circumstances" requiring this Court to hear the issue without first being properly raised and argued in the courts below.

## IV. THE QUESTION PRESENTED CHALLENGES THE CONSTITUTIONALITY OF IOWA CODE SECTION 805.1(4) TO THE EXTENT THAT IT AUTHORIZES A SEARCH INCIDENT TO CITATION.

The Respondent argues that Knowles has made a facial challenge to Iowa Code section 805.1(4). Respondent's Brief pp. 11-13. He has not. The issue Knowles has presented to this Court is whether statutory authorization to search incident to a citation is constitutional under the Fourth Amendment. A state may pass laws on search and seizure procedures, but "[i]t may not . . . authorize police conduct which trenches upon Fourth Amendment rights . . . . " *Sibron v. New York*, 392 U.S. 40, 60-61 (1968). The constitutional analysis focuses on the conduct the statute authorizes rather than the words of the statute. *Id.* at 62. Knowles challenges the police conduct the statute authorizes, not the words of the statute.

Respondent admits that Knowles challenges that statute as it applies to a search incident to issuance of a

traffic citation; in other words, as it applies to Knowles: "Knowles' [sic] statement of the question presented and his brief on the merits challenge section 805.1(4) only *as it applies* to issuance of a traffic citation."[7] Respondent's Brief, p. 13 (emphasis added). This is precisely the type of challenge to statutory authorization which was permitted by the *Sibron* Court.

The State has incorrectly framed the issue Knowles has presented in the Iowa courts and is reasserting here. Patrick Knowles is attacking the legality of the search of his automobile under the Fourth Amendment, plain and simple. It is because the police officer justified his search only under the Iowa statute that the law's validity must necessarily be questioned.

The search of Knowles's vehicle was initially attacked by a motion to suppress, which stated in part:

* * *

> 6. The officer did not have probable cause to search the defendant's car, nor did he obtain a search warrant.

[7] Knowles challenges the search in the context of a traffic citation because that is the factual situation in this case. Knowles could not preserve the issue of a search incident to a citation for some other non-traffic offense because he was not cited and searched for some other non-traffic offense. Therefore, Respondent's assertion that Knowles "does not even challenge the constitutionality of search incident to citations of non-traffic offenses" is a misleading argument since that is not the factual situation in this case. Respondent's Brief, p. 13. It is the Respondent that proposes the Court adopt a bright-line rule that would encompass all citations whether they be for traffic offenses or more serious crimes. Respondent's Brief, pp. 36-38.



> 7. The officer stated in his report that the search was conducted "incident to citation."
>
> 8. No such exception to the warrant requirement exists under the Fourth Amendment to the Constitution.
>
> 9. Because the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional. . . .

(App. p. 7).

At the suppression hearing, the officer justified the search only upon the statutory authority to search incident to citation:

> Q. Anything you observed lead you to believe or give you probable cause to believe that he was involved in criminal activity?
>
> A. Not on this date, no.
>
> Q. Was it your feeling that your knowledge of his past problems or your past knowledge of Mr. Knowles, did that give you probable cause to search his vehicle?
>
> A. No, the speeding gave me probable cause to search the vehicle. . . .
>
> Q. Was the search of his vehicle and his person conducted after he received the copy of the citation?
>
> A. Yes, ma'am. . . .
>
> Q. Did you need, at that point, to obtain any further evidence of speeding?

A. Not of speeding, no.

Q. It was your understanding that simply because you had issued him a citation that that gave you the right – without any further probable cause gave you the right to search him and his vehicle?

A. Yes, ma'am.

(App. pp. 17-19).

Both the district court and the Iowa Supreme Court found the search lawful only on the basis of authority granted to police under the search incident to citation statute. (App. pp. 20-21, 30-34).

The statute must necessarily be challenged because the police officer, the prosecutors, and the Iowa courts maintain it is the only justification for the search. Because the statutory authorization is a bright-line rule allowing blanket authority to search all vehicles under any circumstance where a citation has been issued, the counter arguments must be responsive. Patrick Knowles would gladly limit his Fourth Amendment attack to the narrow facts peculiar to his case; however, the Iowa authorities did not seek to justify the search on any other basis than a broad and abstract authority to search any person cited for a traffic offense.

In fact, the state ignores its own admonition in urging this Court to adopt a bright-line rule authorizing all searches incident to citation. Respondent's Brief, pp. 36-38. Respondent argues for "A bright-line rule authorizing search incident to citation is necessary to ensure uniform application of the protections of the Fourth Amendment." Respondent's Brief, p. 36. To the extent



Knowles's Fourth Amendment arguments have strayed into the abstract, it is only in pursuit of bright-line search justification thrown in his path by the State of Iowa.

Knowles's arguments are precisely as individualized and case specific as the officer's justification to search his vehicle and the Iowa Supreme Court's reasoning in upholding it. Since the search was approved based on the authority granted by Iowa Code section 805.1(4), Knowles has challenged the statute to the extent it grants such authority. This Court has jurisdiction to consider the question presented.

## CONCLUSION

For the above reasons as well as those presented in Petitioner's Brief, Petitioner respectfully prays the Court will reverse the decision of the Iowa Supreme Court.

Respectfully submitted,

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No. 97-7597

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1997

PATRICK KNOWLES,

*Petitioner*,

—v.—

STATE OF IOWA,

*Respondent*.

ON WRIT OF *CERTIORARI*
TO THE IOWA SUPREME COURT

## BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION, THE IOWA CIVIL LIBERTIES UNION, AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, IN SUPPORT OF PETITIONER

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## INTEREST OF *AMICI* [1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Constitution. The Iowa Civil Liberties Union is its statewide affiliate. In support of these principles, the ACLU has appeared before this Court in numerous Fourth Amendment cases, both as direct counsel and as *amicus curiae*. Because this case addresses an important Fourth Amendment question, its proper resolution is of substantial concern to the ACLU and its members.

## STATEMENT OF THE CASE

According to §805.1(1) of the Iowa Code, an officer who has grounds to make an arrest for a bailable offense "may issue a citation in lieu of making an arrest." Section 805.1(4) of the Iowa Code further provides that the "issuance of a citation in lieu of arrest . . . does not affect an officer's authority to conduct an otherwise lawful search." The Iowa Supreme Court has interpreted this statute to mean that an officer who may take a person into custody for an offense, but instead elects to issue a citation, may "conduct a search of the same scope as the [C]onstitution authorizes for a search incident to custodial arrest." *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995). Thus, an officer may conduct a full search of the cited individual's person and the

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[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for a party authored this brief in whole or in part and no person, other than *amici*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

area within his or her immediate control. *Id.*; *State v. Meyer*, 543 N.W.2d 876, 878-879 (Iowa 1996).

Iowa law permits an officer to make a custodial arrest of a person whenever there is probable cause to believe that that person has committed a traffic offense in the officer's presence. *State v. Cook*, 530 N.W.2d at 732. Consequently, a driver who is given a citation for any traffic offense in the officer's presence may be subjected to full searches of her person, the entire passenger compartment of her vehicle, and any containers found therein.[2]

On March 9, 1996, Patrick Knowles was stopped by a police officer for driving at an excessive speed. After determining that Knowles' license was valid and that there were no warrants for his arrest, the officer issued a citation for speeding. The officer searched both Knowles and the passenger compartment of his vehicle. Knowles was arrested when the officer found marijuana and a pipe under the driver's seat. He was ultimately charged with possession of marijuana and keeping marijuana in a motor vehicle.

Knowles moved to suppress the evidence found in his vehicle, claiming that the officer's searches had violated the Fourth Amendment. At an evidentiary hearing, the officer conceded that he did not have probable cause or reasonable suspicion that Knowles was involved in any criminal activity other than speeding and that Knowles did not consent to the

[2] *See State v. Knowles*, 569 N.W.2d 601 (Iowa 1997)(search under driver's seat pursuant to citation for speeding); *State v. Doran*, 563 N.W.2d 620 (Iowa 1997)(search of person pursuant to citation for lack of proper motorcycle lighting); *State v. Meyer*, 543 N.W.2d 876 (search of open canister in passenger compartment pursuant to citation for speeding); *State v. Cook*, 530 N.W.2d 728 (search of passenger pursuant to citation for failure to wear seat belt).



searches performed. The officer admitted that the sole justification for the searches was that they were "incident to the citation" for speeding. The trial court denied the motion to suppress, found Knowles guilty of both marijuana offenses, and sentenced him to concurrent 90-day terms of imprisonment.

Knowles appealed the suppression ruling to the Iowa Supreme Court, challenging the constitutionality of the statutory authority to conduct searches incident to citation.[3] In a 5 to 4 decision, the court concluded that the officer had performed a search authorized by §805.1(4) of the Iowa Code and that the searches authorized by that provision are not "unreasonable" under the Fourth Amendment. Consequently, the court affirmed Knowles' convictions.

## SUMMARY OF ARGUMENT

The state's position in this case -- that police officers may conduct otherwise unjustified searches incident to traffic citations -- cannot be reconciled with the Fourth Amendment's core requirement of reasonableness. It conflicts with the practice at common law, this Court's precedents, and a proper balancing of the relevant individual and governmental interests involved. At common law, the search incident to arrest doctrine permitted searches only when officers had

[3] Knowles argued that the searches in this case were invalid because a search incident to a mere citation always violates the Fourth Amendment. He also contended that the searches in this case were invalid because a custodial arrest for speeding would be an unreasonable seizure under the Fourth Amendment. The Iowa Supreme Court did not address the validity of a custodial arrest for speeding because that issue "was not raised in the motion to suppress before the district court." *State v. Knowles*, 569 N.W.2d at 603.

taken, or were in the process of taking, an individual into custody. Only then were the two justifications proffered for such searches -- preventing escape and preserving evidence -- applicable. Detentions for purposes of issuing traffic citations were not known to the common law. The closest analogy seems to be the approved practice of detaining suspicious persons for purposes of investigation. During such detentions, officers had no authority to search the person detained.

The search incident to arrest doctrine permits exceptional warrantless searches not based on probable cause or any level of particularized suspicion. Both the language and the reasoning of the Court's opinions strongly suggest that that doctrine requires an actual custodial arrest. Only when an individual is taken into custody are there distinct opportunities and motivations to escape, to eliminate evidence, and to threaten harm to arresting officers. These special circumstances have provided the basis for a conclusive presumption that a warrantless, suspicionless search is nonetheless reasonable. In addition, the *Terry* doctrine holds that when an officer merely detains an individual he may conduct *only* a limited patdown search for weapons *if* he has a reasonable suspicion that the person is armed and dangerous. Logically, those same limitations should be imposed on the authority to search during a routine traffic stop.

The balancing of interests that underlies all Fourth Amendment reasonableness determinations also tips decidedly against permitting routine searches incident to traffic citations. The intrusions on individual privacy interests are severe. Full searches of persons, their vehicles, and their private repositories seriously interfere with reasonable expectations of privacy, which is why such searches can ordinarily be justified only on a showing of probable cause. On the other hand, the government interests in conducting searches in the absence of a custodial arrest or particularized



suspicion are minimal, at best. In a routine traffic stop, an officer can show nothing other than probable cause to believe that a traffic violation has been committed. That showing does not give rise to any interests that would be served by searching the motorist, his vehicle, or his possessions. When an offender is taken into custody, additional interests in preventing escape, officer safety, and the preservation of evidence are present. When the offender is merely cited, those interests are generally absent. Because searches incident to traffic citations would deprive countless innocent citizens of constitutionally protected interests in privacy, dignity, and liberty, and serve no substantial public interests, they must be deemed unreasonable.

According to the Iowa Supreme Court and the statute it interpreted, a search incident to a traffic citation is reasonable whenever an officer "could have" taken the cited motorist into custody and "could have" searched the motorist if he had taken him into custody. This "could have" reasoning is seriously flawed. It overlooks the fact that, unless there is an actual arrest, there is no significant public interest that can justify a search. Moreover, "could have" reasoning has almost unlimited potential to erode well-established Fourth Amendment protections. Carried into other contexts, it could threaten to undermine numerous search and seizure holdings that rest on logical, substantive grounds. What is reasonable under the Fourth Amendment depends not on what could have happened, but on what did happen.

Finally, requiring that an individual be arrested as a predicate for permitting a search incident to arrest provides appropriate clarity and guidance in the law of search and seizure. An objective standard that permits searches whenever there is a formal arrest or its functional equivalent has precedential support, is comprehensible, and is faithful to Fourth Amendment values.

## ARGUMENT

### I. COMMON LAW, THIS COURT'S PRECEDENTS, AND THE BALANCE OF STATE AND INDIVIDUAL INTERESTS ALL SUGGEST THAT SEARCHES JUSTIFIED SOLELY ON THE GROUND THAT THEY ARE INCIDENT TO CITATION ARE UNREASONABLE UNDER THE FOURTH AMENDMENT

#### A. Common Law Power To Search Incident To Arrest Did Not Extend To Lesser Detentions Where The Suspect Was Never Taken Into Custody

While common law authorities on the power to search incident to arrest "are sparse," *United States v. Robinson*, 414 U.S. 218, 230 (1973), the sources that do exist provide powerful reasons to conclude that the search incident to arrest power does not encompass searches incident to citation.

As early as *Weeks v. United States*, 232 U.S. 383, 391 (1914), the Court observed that "the right . . . of the government . . . to search the person of the accused when legally arrested" had "always [been] recognized under English and American law." For support, the *Weeks* Court, *id.* at 392, cited *Dillon v. O'Brien*, 7 Am. Crim. Rep. 66, 70, a case holding that the recognized authority to conduct a search "upon a lawful *arrest* . . . of one charged with treason or felony" extended to misdemeanants (emphasis added). In arriving at this conclusion, the *Dillon* court referred to the "power" as one that "the law gives to the officer in whose *custody* a person charged with a crime lawfully is," *id.* at 71 (emphasis added), and described the "right" as one that had to be based "upon an allegation of actual guilt and a lawful



*apprehension* of the guilty person." *Id.* at 73 (emphasis added).[4]

In *People v. Chiagles*, 237 N.Y. 193 (1923), a case relied upon by the majority in *United States v. Robinson*, then-Judge Cardozo engaged in an analysis of the common law, concluding that the "basic principle" that emerged was that a "[s]earch of the person becomes lawful when *grounds for arrest* and accusation have been discovered, *and* the law is *in the act of subjecting the body of the accused to its physical dominion.*" *Id.* at 196 (emphasis added); *see also Smith v. Jerome*, 93 N.Y.S. 202, 202-03 (1905)(concluding that the "power" to "search the person of one lawfully *arrested*" has "been exercised under the common law from time immemorial")(emphasis added). Thus, mere cause to arrest was not enough. Actual "physical dominion" of "the body of the accused was also necessary to trigger the common law authority to search.

Not a single authority suggested that it was legitimate to search an individual who had not been subjected, or was not being subjected, to the "physical dominion" of the officer. This restriction on the authority to search was no accident but, rather, was logically grounded in the two justifications for permitting such searches. At common law, the search of an arrestee was designed: (1) "to prevent the ab-

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[4] *See also* 1 Joel Prentiss Bishop Crim. Proc. §211 (2d ed. 1872)(referring to the authority of an "officer who *arrests* a man")(emphasis added); 1 Francis Wharton Crim. Proc. §97 (10th ed. 1918)(referring to the right to take property "from the person or possession of a *prisoner*," and the right to take "articles which . . . will aid in securing the conviction of the *prisoner*, or will prevent his *escape*," and stating that a search is justifiable as an "incident of a lawful *arrest* only; but if the *apprehension* be unlawful, the search is . . . unlawful")(emphasis added).

straction or destruction" of "material evidence of [the arrestee's] guilt or innocence as to his custody for the purpose of trial," *Dillon v. O'Brien*, 7 Am. Crim. Rep. at 71, and (2) to "prevent [the prisoner's] escape." 1 Wharton Crim. Proc. §97. Those justifications were relevant only when a person was taken into custody.

The common law did recognize the authority of officers "to detain suspicious persons." *See Minnesota v. Dickerson*, 508 U.S. 366, 380 (1993)(Scalia, J., concurring). Thus, there were situations in which officers briefly seized individuals in public places, but did not take them into custody. While the precedents permitted such detentions, they did not authorize "a physical search of a person thus temporarily detained." *Id.* "When . . . the detention did not rise to the level of a *full-blown arrest* . . . there appears to be no clear support at common law for physically searching the suspect." *Id.* & authorities cited therein (emphasis added). Temporary detentions for the purpose of issuing traffic citations are much more like common law detentions of suspicious persons than they are like "full-blown arrests." Consequently, the common law prohibition on searches of detained persons would seem to preclude searches incident to traffic citations.

This is not an instance where changes in society or technology support an expansion of the traditional authority to search those custodially arrested to include those merely cited for traffic infractions. To the contrary, the development of motor vehicles and their increasingly indispensable role in modern life, coupled with the proliferation of minor traffic (and other) "crimes" unknown to the common law, militate against unjustifiable extensions of search incident to arrest authority in ways that jeopardize the constitutional privacy interests of countless innocent citizens. Many law-abiding people are apt to violate one of the myriad, minor traffic code provisions, thereby giving an officer grounds to



detain them for the purpose of issuing a citation.[5] Recognition of the authority to search incident to citation threatens unjustified privacy losses that are wholly incompatible with "that degree of respect for the privacy of persons," *Minnesota v. Dickerson*, 580 U.S. at 380 (Scalia, J., concurring), reflected in the common law rules and embodied in the Fourth Amendment guarantee.

### B. This Court's Precedents Consistently Suggest That, In The Absence Of Actual Custodial Arrest, Full Searches Of Persons, Vehicles, And Possessions Are Unreasonable Without Probable Cause To Search

In *United States v. Robinson*, 414 U.S. at 236 n.6, the Court reserved the question of whether the search of a person incident to a citation given during "'a routine traffic stop'" could be constitutional (internal citation omitted). The precedents of the Court that shed light on that question are wholly consistent with the message of the common law. Both the language and reasoning of these cases provide weighty support for the contention that searches conducted incident to traffic citations, in the absence of probable cause to search, a warrant, or other particularized suspicion, violate the Fourth Amendment.

This Court has consistently described the search incident to arrest doctrine as predicated on an actual custodial

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[5] *See* Maryland v. Wilson, 519 U.S. __, 117 S.Ct. 882, 888 (1997)(Stevens, J., dissenting)(opining that traffic stops "amount to significant law enforcement activity" and that in "Maryland, alone, there are something on the order of one million traffic stops each year"); *id.* at 890 (Kennedy, J., dissenting)(under the Court's precedents, police are allowed "to stop vehicles in almost countless circumstances," a reality that "puts tens of millions of passengers at risk of arbitrary control by the police").

arrest. In *Chimel v. California*, 395 U.S. 755, 763 (1969), the Court held that "[*w*]*hen an arrest is made* it is reasonable for the arresting officer to search the *person arrested*" and "the area 'within his immediate control'" (emphasis added)(internal citation omitted). In arriving at that conclusion, the Court cited several earlier decisions, all of which used similar language in describing the predicate for the warrantless search authorized by the search incident to arrest doctrine.[6]

In *Robinson* itself, the Court described the search incident to arrest doctrine as permitting the full search of any person subjected to a "lawful *custodial arrest*" no matter what the nature of the offense for which he has been arrested. 414 U.S. at 234. Time and time again, the *Robinson* majority made it clear that the authority to conduct a warrantless, suspicionless search incident to arrest arises "after a police officer lawfully places a suspect *under arrest for the purposes of taking him into custody*." *Id.* at 227 (emphasis added); *see id.* at 234 ("The justification for . . . authority to search incident rests quite as much on the need to disarm the suspect *in order to take him into custody*") (emphasis added); *id.* at 236 ("[I]t is the fact of *custodial arrest* that gives rise to the authority to search")(emphasis added); *id.* at 232 (quoting Cardozo, *see supra* p.7).

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[6] *See, e.g., Trupiano v. United States*, 334 U.S. 699, 708 (1948)("A search . . . incident to a lawful arrest . . . grows out of the inherent necessities of the situation at the time of arrest")(emphasis added); *Agnello v. United States*, 269 U.S. 20, 29 (1925)("The right . . . to search *persons lawfully arrested while committing crime* . . . is not to be doubted")(emphasis added); *Weeks v. United States*, 232 U.S. at 392 (referring to "the right . . . to search the person of the accused *when legally arrested*")(emphasis added).



Similarly, in *New York v. Belton*, 453 U.S. 454 (1981), the Court concluded that when an arrestee is a "recent occupant" of a vehicle, the entire passenger compartment of that vehicle is presumptively within the arrestee's immediate control and, therefore, is subject to a search incident to arrest. Once again, the Court made it clear that the authority to search depended upon a "lawful *custodial arrest*." *Id.* at 459 (emphasis added); *see also id.* at 457 (referring to the "principle that limits a search incident to a lawful *custodial arrest*")(emphasis added); *id.* at 458 (question before Court is "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest")(emphasis added).

The reasoning underlying these consistent statements makes clear that the words "custodial arrest" impose a strict, logical limitation upon the proper scope of the search incident to arrest exception to the usual Fourth Amendment requirements. The search incident to arrest doctrine permits a search without a warrant, without any showing of probable cause to search, and without any evaluation of the need for a protective search in the particular case. Such searches are nevertheless conclusively presumed to be reasonable because of the extraordinary pressures and dangers created when a person is taken into custody. The authority to search is justified by the need "to remove any weapons that [the person arrested] might seek to use to *resist arrest or effect his escape*" and by the additional need, in many cases, to prevent an arrested person from concealing or destroying evidence. *Chimel v. California*, 395 U.S. at 763 (emphasis added). Inherent exigency and an obvious lack of time to seek judicial approval require an exemption from the warrant rule. The probable cause to search norm is suspended because of the inherent risk that an arrestee could have a weapon or evidence *coupled with* two other possibilities: (1) that a person taken into custody will be more *motivated* to attempt to es-

cape or harm an arresting officer or destroy or conceal evidence, and (2) that a person taken into custody will have a greater *opportunity* to endanger officers. When a person is being arrested, his motivation to use a weapon to "resist arrest or effect his escape" and to conceal or destroy evidence may well increase. Furthermore, "the extended exposure which follows the taking of a suspect into custody and transporting him to the police station," *United States v. Robinson*, 414 U.S. at 234, provides an opportunity to extract and use a concealed weapon against an arresting officer. These substitutes for probable cause to search arise *only* in cases of custodial arrest. "It is the fact of custodial arrest which gives rise to the authority to search," *id.* at 236, because only actual custody generates reasons to search automatically.

By way of contrast, in *Terry v. Ohio*, 392 U.S. 1 (1968), the Court held that an officer may conduct not a full search, but a frisk, a narrowly circumscribed patdown of the outer clothing of a person who has been detained but not arrested. Moreover, an officer may do so only if he has a reasonable suspicion that the person is armed and dangerous. The Court has rejected efforts to impose *Terry*'s limitations upon the permissible scope of a search incident to a full custodial arrest. *See United States v. Robinson*, 414 U.S. at 228. Because arrests are unique in intrusiveness and in the societal interests they are designed to serve, the Court has decided that a bright-line presumption is justified and that case-by-case determinations of reasonableness are not required.

Routine traffic stops are like *Terry* detentions and are unlike custodial arrests in all important respects. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). These stops are "presumptively temporary and brief," *id.* at 437, do not involve physical transportation of the motorist to the police station, and do not make "the motorist feel[] completely at



the mercy of the police." *Id.* at 438. The intrusions on freedom and privacy are much less severe than the intrusions occasioned by custodial arrest. Unlike arrests, detentions for the issuance of traffic citations are not "'inevitably accompanied by future interference with the individual's freedom of movement.'" *United States v. Robinson*, 414 U.S. at 228 (quoting *Terry v. Ohio*). More important, the societal interests at stake in a traffic stop cannot justify privacy intrusions greater than those permitted by *Terry*. Thus, an officer may frisk, not fully search, a cited motorist only if the officer has reasonable suspicion that the motorist is armed and dangerous, and may conduct a limited weapons search of a vehicle's passenger compartment only based on a reasonable suspicion that the motorist is dangerous and may gain immediate control of weapons. *See Michigan v. Long*, 463 U.S. 1032, 1049-50 (1983).[7]

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[7] Other decisions in the *Terry* line confirm the conclusion that *Terry* doctrine limitations should govern traffic stops. In *Minnesota v. Dickerson*, 508 U.S. 366, the Court held that an officer who is justified in patting down a suspect during an investigative detention must strictly confine his search to a tactile inspection, designed to detect large weapons, of the suspect's outer clothing. In *Dickerson*, the officer violated the Fourth Amendment because his manual manipulation of an object in the suspect's pocket went beyond the scope of a proper weapons frisk and was not supported by probable cause to search. According to *Dickerson*, a suspect properly detained on a reasonable suspicion of involvement in narcotics offenses cannot even be subjected to the quite limited privacy invasion involved in externally manipulating the contents of his pocket. This restriction applies even if the officer has a reasonable suspicion that the object is contraband. Surely, no greater intrusion is justifiable during a traffic stop.

In addition, in *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977), the Court held that an officer may automatically remove a driver from a vehicle during a traffic stop, and in *Maryland v. Wilson*, 117 S.Ct. at 884, the Court held that passengers are also subject to automatic removal during legitimate traffic stops. In holding these "seizures" to be reasona-

(continued...)

### C. Searches Incident To Traffic Citations Are Unreasonable Because The Intrusions Upon Individual Interests In Privacy, Liberty And Dignity Clearly Outweigh The Governmental Interests Served By Routine Searches Of Everyone Issued A Citation

Under the Fourth Amendment, "there is 'no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.'" *Terry v. Ohio*, 392 U.S. at 20-21 (quoting *Camara v. Municipal Court*, 387 U.S. 523, 534-35 (1967)). Because probable cause is the norm, when a search or seizure is not supported by probable cause, detailed balancing is necessary to determine whether it should be exempted from the normal requirement. *See Whren v. United States*, 517 U.S. 806 (1996).

The intrusions authorized by Iowa law are nothing less than *full* searches of persons, their vehicles, and the private containers inside those vehicles. The search of a person's body is so serious an invasion of personal privacy that it ordinarily requires probable cause to believe that an item in which the government has a legitimate interest is concealed

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[7] (...continued)
ble without any additional showing of cause, the Court stressed the "minimal" nature of the intrusion involved in removing an already stopped driver or passenger from a vehicle. *Id.* at 886. The compelling "interest in officer safety" was thought to outweigh the "personal liberty" interests of drivers and passengers *only* because of the exceptionally limited nature of the infringement involved in removing a person from an already stopped vehicle. *Id.* The logic of these decisions strongly suggests that full-fledged searches of drivers, passengers, vehicles, or private possessions during routine traffic stops to issue citations are unreasonable.



on that person.[8] Full searches of the passenger compartments of vehicles and other containers also result in substantial privacy deprivations that ordinarily require probable cause to search.[9] The searches performed in Iowa incident to traffic citations constitute enormous and serious intrusions upon constitutionally protected privacy interests. Moreover, privacy interests are not the only casualty. Full searches of innocent motorists' persons are frightening affronts to their dignity. And the additional liberty that is lost while an officer engages in the thorough vehicle searches permitted by Iowa law can never be restored to the innocent motorist who has had the temerity to drive a little too fast, neglect to fasten her seatbelt, or fail to notice that her tail light had burned out moments before she was stopped.

On the other side of the balance, the public interests served by searches incident to traffic citations are insubstantial and speculative. The only demonstrated societal interest is in "prosecuting" the motorist (or passenger) for a traffic infraction. This interest is not served by a search. Ordinarily, there is no evidence to be found, destroyed, or concealed. Because an individual who receives a citation is not in extended, close contact with the citing officer, a search is not needed to protect the officer. Unlike an arrestee, a mo-

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[8] *See Minnesota v. Dickerson*, 508 U.S. at 375 (holding that the limited intrusion involved in tactile manipulation of an object from outside a suspect's pocket could not be justified on less than probable cause); *Ybarra v. Illinois*, 444 U.S. 85, 95 (1979)(holding that the search of a person for contraband is governed by the "'long-prevailing' constitutional standard of probable cause")(internal citation omitted).

[9] *See, e.g., California v. Acevedo*, 500 U.S. 565, 573-74 (1991)(while search warrant is not needed to search vehicle and containers, probable cause is necessary); *United States v. Chadwick*, 433 U.S. 1, 11 (1977) (search warrant, based on probable cause, is required to search footlocker); *see also Arizona v. Hicks*, 480 U.S. 321, 325-26 (1987)(mere movement of a turntable requires probable cause).

torist who has been given a traffic citation does not have the opportunities that custody provides to extract a weapon and threaten an officer's safety, and does not have the powerful motivations that custody generates to escape, to harm the officer, or to destroy or conceal potential evidence. Although it is possible that a motorist who violates a traffic law will also happen to possess a weapon, *Terry* and *Michigan v. Long* allow officers to protect themselves from that possible danger by frisking (not fully searching) the individual or vehicle, as long as they have reason to believe that there is danger present in the particular situation. It is simply not reasonable to assume that motorists who are issued traffic citations present measurable risks that are in any respect comparable to those posed by arrestees. Unlike the fact of arrest, the fact of citation furnishes no basis for presuming the presence of the substantial government interests that alone can justify full searches of persons and their possessions.

Because routine stops for traffic violations "[i]n the aggregate, . . . amount to significant law enforcement activity," *Maryland v. Wilson*, 117 S.Ct. at 888 (Stevens, J., dissenting), and because "[m]ost traffic stops involve otherwise law-abiding citizens," *id.*, it is fair to assume that random searches of motorists incident to citation would result in substantial losses of privacy for countless innocent citizens.[10] This likely consequence weighs heavily against the

[10] The Fourth Amendment was in large part a reaction to the general warrants and writs of assistance that authorized government agents to search wherever they wanted upon a bare suspicion. *See* James J. Tomkovicz, *California v. Acevedo*: The Walls Close in on the Warrant Requirement, 29 Am.Crim.L.Rev. 1103, 1130 (Summer 1992). Those tools of oppression granted agents of the government nearly unfettered discretion "to choose whom, where, and what to search and seize." *Id.* at 1134. The authority and discretion to search without cause granted by (continued...)



reasonableness of automatic authority to conduct random searches incident to traffic citations.[11]

When the intrusion upon individual interests and the nature and magnitude of the public interests are placed on the Fourth Amendment scales, one conclusion is unavoidable. The state's interest in performing searches incident to traffic citations in circumstances where no particularized need to search can be demonstrated does not outweigh the damage to personal freedom and privacy inflicted by those searches. The balance tips decisively in favor of the individual.

## II. AN ACTUAL CUSTODIAL ARREST, NOT SIMPLY PROBABLE CAUSE TO ARREST, IS NECESSARY TO JUSTIFY A SEARCH INCIDENT TO ARREST

### A. A Search Incident To Citation Is Not Reasonable Merely Because An Officer "Could Have" Taken Steps That Would Have Justified A Search

Both the Iowa statute authorizing searches incident to citation and the state court opinions sustaining the validity of those searches rest on hopelessly flawed reasoning. According to that logic, because an officer who lawfully cited

[10] (...continued)
the search incident to citation doctrine threatens to inflict the same sorts of widespread, unjustified privacy deprivations.

[11] *See, e.g., Reid v. Georgia*, 448 U.S. 438 (1980)(rejecting a reasonable suspicion finding because of the threat to "a very large category of presumably innocent travelers"); *see also Maryland v. Wilson*, 117 S.Ct. at 888 (Stevens, J., dissenting)(expressing concern for "the potential daily burden on thousands of innocent citizens"); *id.* at 890 (Kennedy, J., dissenting)(warning that the Court's decisions "put tens of millions of [innocent] passengers at risk of arbitrary control by the police").

a traffic offender had probable cause to believe that a traffic law had been violated, he *could have* taken the offender into custody and, therefore, *could have* conducted a full search incident to arrest. The Iowa court reasoned that an officer who has elected merely to cite the offender should not be deprived of authority that he *could have* acquired by arresting the offender. Consequently, an officer who issues a citation should be afforded the same authority to search granted by the search incident to arrest doctrine. This reasoning is inconsistent with the substance of the Fourth Amendment and lacks precedential support.

Whether or not an officer *could have* had a basis for searching, if he does not take a motorist into custody he *does not* have a basis for searching. While a real arrest gives rise to real interests, a hypothetical arrest can only engender *hypothetical* interests -- interests that cannot justify a *real* search. Put simply, without custody there is no basis for assuming dangers like those that arise upon arrest. The fact that an officer *could have* arrested a motorist cannot alter that reality.[12]

The hypothetical "could have" reasoning said to support this expansion of the search incident to arrest doctrine opens the door to similar reasoning that would imperil core Fourth Amendment rights. A search incident to citation doctrine, for example, could logically be expanded into a search incident to warning doctrine. If a search incident to citation is reasonable because the officer *could have* arrested the motorist and *could have* searched him if he had arrested him,

[12] This brief assumes *arguendo* that a custodial arrest for this traffic offense would have been constitutional, although probable cause for arrest is not always sufficient to render a custodial arrest constitutional. *See* Brief *Amicus Curiae* of American Civil Liberties Union in *Ricci v. Arlington Heights*, No. 97-501, *certiorari dismissed as improvidently granted* (May 4, 1998).



then a search incident to warning must also be reasonable because the officer *could have* cited the motorist instead of warning him, *could have* arrested him instead of citing him, and *could have* searched him if he had arrested him.

According to this same reasoning, the warrant rule could be eviscerated. An officer who searches on the basis of probable cause alone could plausibly contend that he *could have* secured a warrant, and, therefore, that his warrantless search should be sustained. Moreover, the search incident to arrest doctrine would be susceptible to further unwarranted expansion. A search incident to arrest is invalid if it is "remote in time or place" from the arrest, *see United States v. Chadwick*, 433 U.S. at 15, because the interests that justify such a search are not powerful enough, if they exist at all, when the arrest is remote either in time or place. "Could have" reasoning, however, could undermine these logically grounded and important temporal and spatial limitations. Even though an officer did in fact search an object when it no longer was within the immediate control of a recently arrested suspect, his search would arguably be reasonable because he *could have* searched the object at the earlier time, when it was within the immediate control of the arrestee.[13]

[13] The examples could be multiplied. A hypothetical, "could have"-based extension of the holding of *South Dakota v. Opperman*, 428 U.S. 364 (1976), would allow an officer who elects not to impound a vehicle that is subject to lawful impoundment to "inventory" the vehicle because he *could have* impounded it and *could have* conducted an inventory search if he had impounded it. A hypothetical, "could have"-based extension of the "arrestee inventory" warrant exception recognized in *Illinois v. Lafayette*, 468 U.S. 1213 (1984), would allow officers who release an arrestee immediately after booking to search him if they *could have* held him in jail briefly and, therefore, *could have* conducted a stationhouse search of his person. The fact that no actual incarceration occurred would no longer preclude a reasonable inventory. A hypothetical,

(continued...)

The search incident to arrest doctrine, like these other Fourth Amendment doctrines, is based not on what could have happened, but on what actually did happen. The officer in this case issued petitioner a citation rather than arresting him for speeding. Therefore, there was no occasion for a search incident to arrest.

One might legitimately wonder whether a holding that searches incident to citations are unreasonable will provide any real Fourth Amendment protection. Informed that citations are a constitutionally inadequate foundation for full searches of drivers and vehicles, officers who presently issue citations might respond by taking motorists into custody and searching them incident to arrest. Under the holding of *Whren v. United States*, 517 U.S. 806, the subjective motivations for the custodial arrest -- including the fact that an arrest was performed solely in order to gain authority to search -- would not undermine the validity of a search incident to that arrest. *See id.* at 811-13.

There is reason, however, to question whether officers would actually remain altogether free to make that choice. Political, economic, or other constraints might well make it infeasible for officers to custodially arrest all, or even substantial numbers of traffic offenders. If large numbers of otherwise innocent citizens were taken into custody and searched on the basis of minor traffic offenses, "the people" might well respond by legislatively constricting the arrest

[13] (...continued)
"could have"-based extension of the "protective sweep" doctrine of *Maryland v. Buie*, 494 U.S. 325 (1990), would allow officers to search the home of a suspect arrested a block away based on a reasonable suspicion of dangerous persons inside the home either because an officer *could have* arrested the suspect when he was in his home, but waited until he exited, or *could have* arrested him when he arrived home, but elected to arrest him prior to arrival.



power of officers. Moreover, police departments or legislators might well conclude that custodial arrests of traffic offenders are not the best use of limited law enforcement resources. When officers conduct searches without actually arresting anyone, as they currently do in Iowa, the damage done to individual freedom may escape public notice and debate. If officers are forced to arrest in order to search, the public may well choose to impose constraints that go beyond those required by the Constitution. In sum, a requirement of custodial arrest is not only mandated by the Fourth Amendment, but will also focus public attention on the propriety and desirability of custodial arrests for minor traffic offenses.

### B. A Custodial Arrest Requirement for Searches Incident to Arrest Provides Appropriate Guidance for Law Enforcement Officers

Fourth Amendment doctrine, particularly the rules regarding searches incident to arrest, should provide adequate guidance for officers who must make quick decisions in potentially dangerous situations. *See New York v. Belton*, 453 U.S. at 459-60; *United States v. Robinson*, 414 U.S. at 235. A custodial arrest standard is consistent with that goal. The line it draws is no less difficult to understand or apply than that drawn by a citation standard.

Whether an individual has been arrested must be judged by an objective standard. Either a "formal arrest" or its "functional equivalent" should be a sufficient trigger for search incident authority. *Berkemer v. McCarty*, 468 U.S. at 441-42.[14] The "functional equivalent" of a formal arrest

[14] Although *Berkemer v. McCarty* was concerned with the standard for making "custody" determinations under *Miranda*, the Court defined custody by borrowing the Fourth Amendment concept of arrest.

occurs when a "reasonable man in the suspect's position" would conclude that he has had his "freedom of action curtailed to a 'degree associated with formal arrest'" or has been "subjected to restraints comparable to those associated with a formal arrest." *Id.* at 442 (internal citation omitted).

An officer with probable cause to arrest an individual can ensure the validity of a search incident by the simple expedient of informing the person that she is under arrest. Because a lawful "formal arrest" will always justify a search incident, any officer in doubt about her authority needs only to formalize the arrest she intends. An officer who for some reason does not take the step of announcing that the individual is under arrest will not necessarily lack the authority to conduct a search incident to arrest. If the officer has effectively taken (or is taking) a suspect into custody, the fact that the formal arrest follows shortly after the search incident to arrest is of no moment.[15] The determination of whether an arrest has occurred or is occurring is one of substance, not of form.

[15] In *Rawlings v. Kentucky*, 448 U.S. 98 (1980), the Court held that a search of the petitioner's person could qualify as incident to his arrest despite the fact that "the search preceded the arrest rather than vice versa." *Id.* at 111. It was clear that the police "had probable cause to place petitioner under arrest" for possession of a sizable quantity of drugs before conducting the search, and that the petitioner was being taken into custody. Under those circumstances, the Court did not find it "particularly important" that "the formal arrest" did not occur until after the search incident. *Id. Rawlings* stands for the sensible principle that the validity of a search incident to arrest should not depend on whether a "formal arrest" has taken place as long the objective circumstances indicate that the suspect has been or is being taken into custody. A contrary conclusion would have elevated form over substance. *See also Sibron v. New York*, 392 U.S. 40, 67 (1968)(recognizing that when an arrest takes place "is a question of fact" and that an officer was entitled to conduct a search incident once he had taken actions that constituted a *de facto* arrest); *see also People v. Chiagles*, 237 N.Y. at 197 (observing that the common law recognized search incident to arrest authority when the law was "in the act of subjecting the body of the accused to its physical dominion").



Presumably, officers already must apply this objective standard in deciding how coercive they may be toward a suspect seized on a reasonable suspicion of criminal activity or how long they may detain that suspect. Even if an officer does not formalize an arrest, if he subjects a suspect to restraints that amount to a *de facto* arrest and does not have probable cause to arrest, the seizure will be deemed unreasonable. *See Hayes v. Florida*, 470 U.S. 811 (1985); *Royer v. Florida*, 460 U.S. 491 (1983); *Dunaway v. New York*, 442 U.S. 200 (1975). If officers must make such "functional equivalent" determinations for purposes of deciding whether investigatory detentions are constitutionally valid, surely there is no reason they cannot make the same determinations for purposes of deciding whether they are entitled to search a person incident to arrest.

The standard adopted by the Iowa court, permitting searches incident to citation, provides no greater clarity or guidance. According to Iowa law, an officer may exercise that authority when he formally issues a citation prior to the search. *See State v. Meyer*, 543 N.W.2d at 879. However, because form must not govern over substance, the Iowa Supreme Court has also upheld a search incident to citation by an officer who did not formally issue a citation until after the search was conducted. *See State v. Cook*, 530 N.W.2d at 732 n.3. The search incident to citation was sustained because it was clear that the officer was going to complete the citation process at the time of the search. Similarly, under the governing custodial arrest standard, searches incident to arrest are permissible whenever it is clear, from the objective circumstances, that an officer is going to formalize the arrest shortly after the search.

Finally, and most important, the "functional equivalent" of arrest standard reflects core Fourth Amendment values in a way that the decision below simply does not. *See Rakas v. Illinois*, 439 U.S. 128, 152 (1978)(Powell, J., concurring). Conversely, expanding the search incident to arrest doctrine to encompass searches incident to citation any time an arrest could have occurred is wholly inconsistent with the Fourth Amendment's requirement of reasonableness and the right of the people "to be secure in their persons, houses, papers, and effects."

In short, a custodial arrest requirement incorporates a standard that is already reflected in the Court's precedents, provides guidance that is no less clear than the alternative "citation" requirement, and is more faithful to Fourth Amendment objectives. For these additional reasons, the Court should reject Iowa's "search incident to citation" doctrine and hold that suspicionless searches are valid only when an officer lawfully places a person under formal arrest or subjects a person to the functional equivalent of a formal arrest.



## CONCLUSION

For the reasons stated above, the judgment of the Iowa Supreme Court should be reversed.

Respectfully submitted,

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No. 97-7597

**IN THE**
**SUPREME COURT OF THE UNITED STATES**
**OCTOBER TERM, 1998**

PATRICK KNOWLES,

*Petitioner,*

v.

The STATE OF IOWA

*Respondent.*

**On Write of Certiorari to the**
**Supreme Court**
**of the State of Iowa**

# BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC. IN SUPPORT OF RESPONDENT

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ARGUMENT:

*I. Reasonableness of a search of a vehicle and its driver under the Fourth Amendment depends on a balance between the individual's right of privacy and the public's interest in the safety of law enforcement officers. Traffic stops are dangerous encounters which pose a significant risk of assault and sometimes death to law enforcement officers. Therefore, the public interest weighs heavily on the side of allowing officers to conduct a brief search for weapons on the driver and within the passenger compartment of the vehicle, as a search incident to a citation in lieu of an arrest.* ..... 7

*II. Iowa Code Section 805.1.4 establishes an important public policy. First, it recognizes that the danger of violence to a law enforcement officer during a lawful traffic stop and detention continues irrespective of whether the driver is eventually arrested or given a citation instead. Second, the statute confers on an officer the discretion to issue a citation in lieu an arrest during traffic stops, which is less intrusive than an arrest. Therefore, whenever there is probable cause to arrest for a traffic or other violation, a search of the driver and of the*

*passenger compartment incident to a citation in lieu of an arrest is reasonable under the Fourth Amendment.* ..... 15

*A. The purpose of searching the driver and the inside of the vehicle incident to an arrest is to discover weapons (to disarm the driver) and to preserve evidence (to prevent its destruction). These needs to search exist irrespective of whether the detention eventually results in an arrest or in the issuance of a citation in lieu of an arrest.* ..... 16

*B. The crucial element conferring upon law enforcement officers the right to conduct a search incident to such an arrest is probable cause to arrest for a traffic violation, not the actual arrest itself, which may occur after the search, and not the motivation of the officer making the traffic stop.* ..... 19

*C. Issuance of traffic citations in lieu of making arrests for traffic offenses is significantly less intrusive than an arrest and therefore should be encouraged and not deterred by any requirement that an actual arrest must occur before an officer can conduct a search for weapons or concealment of evidence.* ..... 22

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## STATEMENT OF INTEREST OF THE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

*Amicus Curiae*, the National Association of Police Organizations, Inc. (hereafter "NAPO"), submits this brief in this case in support of the Respondent, the State of Iowa, for the affirmance of the judgment of the Iowa Supreme Court, which affirmed the trial court's refusal to suppress physical evidence seized from the Petitioner's automobile.[1]

NAPO is a national non-profit organization representing state and local law enforcement officers. Specifically, NAPO is a coalition of police associations and unions from across the United States that serves to advance the interests and legal rights of law enforcement officers through legal advocacy and education. NAPO represents 4,000 law enforcement organizations, with over 220,000 sworn law enforcement officers (including police officers, deputy sheriffs, state troopers, highway patrol officers, and traffic enforcement personnel), 3,000 retired officers, and more than 100,000 citizens who are dedicated to fair and effective crime control and law enforcement. NAPO's affiliate, the National Law Enforcement Officers' Rights Center, advocates the fundamental due process and workplace safety rights for law enforcement officers. NAPO has previously filed *amicus curiae* briefs in the United States Supreme Court and state appellate courts, on behalf of law enforcement officers.

NAPO and its members have a significant interest in the important issue of law before this Court. The Iowa State Police Association is a member of NAPO with approximately 3,000 state

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[1]Pursuant to Supreme Court Rule 37.6, no counsel for any party in this case authored this *amicus curiae* brief in whole or in part, and no person or entity, other than the *amicus curiae* and its members, made a monetary contribution to the preparation or submission of the brief.

police officer members, whose safety during traffic stops will be directly impacted by the outcome of the Court's decision. In addition, NAPO is interested in the impact that this case will have on law enforcement officers throughout the United States. This case will help to define the extent to which law enforcement officers may protect themselves and the public by conducting a search for weapons, whenever they stop a motor vehicle for a traffic or other violation and issue a citation in lieu of making an arrest. Stopping a motor vehicle constitutes one of the least predictable and potentially most dangerous duties of a law enforcement officer. Each traffic stop presents a situation where an officer, usually alone and without any other officer support, must confront unknown individuals, who may be hiding weapons or concealing evidence anywhere on themselves or in the passenger compartment of the stopped vehicle.

In summary, as one of the country's largest police advocacy organizations, NAPO is vitally concerned with the safety of law enforcement officers throughout the Nation. NAPO seeks to provide the Court with the perspective of the police profession, a meaningful insight into the serious danger inherent in routine traffic stops, and arguments and facts that support the substantial need for police officers to be able to conduct searches incident to the issuance of a traffic citation, in lieu of an actual arrest, to protect against that danger.

## WRITTEN CONSENT OF THE PARTIES

NAPO has received the written consent of the Petitioner Patrick Knowles (through his attorney) and the Respondent State of Iowa (through the Office of the Attorney General), pursuant to Supreme Court Rule 37.3(a), to file this brief. The original copies of these letters of consent have been filed with the Clerk of the Court, as required by the rule.



## STATEMENT OF THE CASE

On March 9, 1996, Officer Ronald Cook of the Newton, Iowa, Police Department observed Petitioner Patrick Knowles driving his vehicle at an excessive rate of speed. Officer Cook signaled Knowles to pull over and detained him. The officer checked the Petitioner's driver license and determined that there were no warrants for his arrest. The officer then decided to issue Knowles a speeding citation and conducted a search of both Knowles and the passenger compartment of his vehicle. During that search, the officer found a pipe and some marijuana under the driver's seat. The office arrested Knowles, and the State charged him with possession of marijuana and keeping marijuana in his vehicle, for which he subsequently was convicted.

Knowles moved to suppress the admissibility of the evidence seized from his vehicle, on the ground that the search violated the Fourth Amendment of the United States Constitution. Based on the testimony of the officer during the suppression hearing, it is undisputed that:

(1) Officer Cook stopped Knowles for excessive speeding, an offense for which Knowles was subject to arrest;
(2) Officer Cook had probable cause for the stop, based on the defendant's excessive speed, but had no probable cause or suspicion to believe that Knowles was involved in any other criminal activity; and
(3) Knowles did not consent to the search of his vehicle.

The officer testified that he issued a citation and conducted a search incident to the citation, pursuant to Iowa Code 805.1.

Iowa Code 805.1 "Issuance of Citation - Release":

> 1. Except for an offense for which an accused would not be eligible for bail . . . , a peace officer having grounds to make an arrest may issue

a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

* * * * * *

4. The issuance of a citation in lieu of an arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements . .

The trial court rejected Knowles' motion to suppress the evidence found in his vehicle. Subsequently, Knowles appealed to the Iowa Supreme Court, which upheld his conviction, citing its recent decision in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), upholding the constitutionality of the provisions at issue. *State v. Knowles*, 569 N.W.2d 601 (Iowa 1997). The court stated:

> We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

*Id.* at 602-03.



## SUMMARY OF THE ARGUMENT

Under the Fourth Amendment, reasonableness of a stop and search of a vehicle and its driver during a routine traffic stop rests on the balance between an individual's right of privacy and the public's significant interest in the safety of its law enforcement officers.

Traffic stops are inherently dangerous and risky and pose a significant threat to the physical safety of law enforcement officers. It is not uncommon for routine traffic stops to escalate into a violent situation. In fact, thousands of officers have been assaulted, and at least 300 officers have been feloniously killed by drivers or other occupants of vehicles involved in traffic stops or pursuits. Iowa Code §805.1(4), which allows for lawful searches incident to a citation if a citation is issued in lieu of an arrest, is a legitimate and reasonable effort by the State of Iowa to reduce this danger to police officers during traffic stops in a less intrusive manner than a full custodial arrest.

Court precedent authorizes searches of persons and vehicles incident to an arrest based on probable cause, even before an actual arrest occurs. The purpose of such searches is to discover weapons (in order to disarm the driver) and to preserve evidence (to prevent its destruction). The application of Iowa Code §805.1(4) recognizes that once a law enforcement officer stops and briefly detains occupants of a vehicle, based on probable cause that a traffic violation has occurred, the officer is exposed to a potentially dangerous situation. The statute is also based on the realization that this danger exists at the onset of the stop and detention, regardless of whether the officer eventually decides to make a formal arrest or issue a citation in lieu of an arrest.

Therefore, where probable cause to arrest exists, the ultimate charging decision made by the police officer should not

determine the validity of an otherwise lawful search. Limiting searches during routine traffic stops to only when there is an eventual arrest would significantly increase the risk of harm to law enforcement officers in Iowa, who decide to issue a citation in lieu of an arrest. In view of the rationale underpinning this Court's past decisions concerning the constitutionality of vehicular searches, the distinction between a search incident to an arrest and a search incident to a citation in lieu of an arrest is meaningless in the context of officer exposure to significant danger of injury or death.

Accordingly, searches incident to a citation in lieu of an arrest, conducted pursuant to Iowa Code §805.1(4), advance a significant public interest in protecting officer safety and are reasonable under the Fourth Amendment. Thus, any weapon seized or evidence of crime uncovered during such searches is properly admissible in a criminal case, as was the evidence of criminality discovered in the Petitioner's vehicle in this case.

Furthermore, issuing a traffic citation in lieu of making an arrest is significantly less intrusive. A requirement that an actual arrest must occur before a search for weapons or concealed evidence can take place would deter law enforcement officers from proceeding in this less intrusive manner. The Iowa statute follows a more reasonable approach by giving officers needed flexibility, and thus benefits the citizens of Iowa.



## ARGUMENT

### I. REASONABLENESS OF A SEARCH OF A VEHICLE AND ITS DRIVER UNDER THE FOURTH AMENDMENT DEPENDS ON A BALANCE BETWEEN THE INDIVIDUAL'S RIGHT OF PRIVACY AND THE PUBLIC'S INTEREST IN THE SAFETY OF LAW ENFORCEMENT OFFICERS. TRAFFIC STOPS ARE DANGEROUS ENCOUNTERS WHICH POSE A SIGNIFICANT RISK OF ASSAULT AND SOMETIMES DEATH TO LAW ENFORCEMENT OFFICERS. THEREFORE, THE PUBLIC INTEREST WEIGHS HEAVILY ON THE SIDE OF ALLOWING OFFICERS TO CONDUCT A BRIEF SEARCH FOR WEAPONS ON THE DRIVER AND WITHIN THE PASSENGER COMPARTMENT OF THE VEHICLE, AS A SEARCH INCIDENT TO A CITATION IN LIEU OF AN ARREST.

This Court has recognized that law enforcement officer safety during a vehicle stop is the crucial "public interest" factor in analyzing the reasonableness of searches and seizures of vehicles and their occupants under the Fourth Amendment. *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882 (1997). In citing statistics on the number of officer assaults and deaths arising during traffic pursuits and stops, the Court stated, "Regrettably, traffic stops may be dangerous encounters." *Id.* at 885. Referring to *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977) (and cases cited therein), *Wilson* set forth the analysis required in public officer safety situations, as follows:

> We reversed [in *Mimms*], explaining that "[t]he touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security,' "

[citations omitted], and that reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers,' " [citations omitted]. On the public interest side of the balance, we noted that the State "freely concede[d]" that there had been nothing unusual or suspicious to justify ordering Mimms out of the car, but that it was the officer's "practice to order all drivers [stopped in traffic stops] out of their vehicles as a matter of course" as a "precautionary measure" to protect the officer's safety. [Citations omitted.] We thought it "too plain for argument" that this justification--officer safety--was "both legitimate and weighty." [Citations omitted.] In addition, we observed that the danger to the officer of standing by the driver's door and in the path of oncoming traffic might also be "appreciable." [Citations omitted.]

*Wilson*, 117 S.Ct. at 884-885 (quoting from *Pennsylvania v. Mimms*, 434 U.S. at 108-111).

The reasoning on which *Maryland v. Wilson* was predicated applies equally to searches of drivers and the passenger compartments of their vehicles, whenever there is probable cause for an arrest and a detention of a vehicle.

Patrolling the Nation's highways and streets is one of the more important duties of state and local law enforcement officers and is a routine part of most officers' work. And, in recent years, public demand for such enforcement has increased due to the rise of aggressive driving and "road rage." Today, traffic stops are one of the riskiest tasks for law enforcement officers and pose a significant threat to their physical safety.



The statistics on the numbers of officers killed feloniously or assaulted in the line of duty while performing traffic stops confirm this danger. Since the advent of the automobile, approximately 300 law enforcement officers are known to have died during traffic stops, and approximately 80 percent of those (or 240) were shot to death.[2] More recently, during the years 1977 through 1986, 61 law enforcement officers were feloniously killed (usually shot) in the line of duty while conducting traffic stops/pursuits.[3] From 1987 through 1996, there were 90 law enforcement officers feloniously killed during traffic stops and pursuits.[4] For the same ten year period ending in 1996, there were ***4,333*** law enforcement officers assaulted through use of weapons during traffic stops and pursuits.[5] In 1997 alone, eleven of the 159 officers who died were killed while conducting traffic stops.[6]

A recent FBI study describes the difficulty that officers

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[2]Craig W. Floyd, *For Law Enforcement Officers, Traffic Stops Are Fraught with Danger*, AMERICAN POLICE BEAT, Mar. 1998, at 36. (This article discusses a number of the more egregious episodes of violence against law enforcement officers during traffic stops.)

[3]National Law Enforcement Officers Memorial Fund, *Police Officers Killed Since 1977 During Traffic Stops, etc.*, July 11, 1996, (unpublished compilation of data). For 1997, the Memorial Fund has released data showing that, of the 159 law enforcement killed in the line of duty, 70 were shot to death (including but not limited to traffic stops), 40 died in automobile accidents, and 17 were struck by vehicles. Memorial Fund Press Release, *Dramatic Increase in Police Deaths During 1997*, December 30, 1997.

[4]FBI UNIFORM CRIME REPORTS, U.S. DEPARTMENT OF JUSTICE, *Law Enforcement Officers Killed and Assaulted in 1996*, at 27, <http://www.fbi.gov.ucr/killassl.htm>.

[5]*Id.* at 69.

[6] Floyd, *supra*, note 2, at 37.

face, when trying to discern whether the person in a vehicle they stop for a traffic violation is likely to assault them. While victim officers in the study had a "preconceived image" of the person most likely to assault, the study's data indicated that "[n]o singular profile exists of an individual who would assault, attempt to kill, or actually kill a police officer."[7] The officer's preconceptions of the likely assaulter profile were of "little value in securing their personal safety."[8] The study concluded, that "traffic stops--tasks frequently viewed as routine and repetitive--pose a potentially grave threat to officers. Few officers considered that someone they stopped for a minor infraction of law would consider taking their lives in an effort to escape."[9]

Statistics do not convey a full sense of the danger lurking when an officer stops a vehicle for a simple traffic infraction. Lists compiled on law enforcement memorial sites on the Internet illustrate many examples of the hundreds of officers who have lost their lives while conducting traffic stops. Although some of these deaths occurred when the officers were struck by oncoming traffic, an alarming number of officer deaths at traffic stops resulted from violence initiated by an occupant of the stopped vehicle. The following examples represent only a few of such cases.

The *1997 Roll of Honour* and the *1998 Roll of Honour* disclose a number of officer deaths occurring during traffic stops, three of which especially highlight these dangers:

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[7]Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, *In the Line of Fire: Learning from Assaults on Law Enforcement Officers*, FBI LAW ENFORCEMENT BULLETIN, U.S. DEPARTMENT OF JUSTICE, Feb. 1998, at 17.

[8]*Id.* at 21-22.

[9]*Id.*



--Mark Stall, Officer, Boise (ID) Police Department, killed on 9/20/97; he had requested assistance after stopping a vehicle and the occupants had failed to co-operate with him. The occupants eventually left the vehicle and opened fire on the officers at the scene. Officer Stall left a wife and two small children.

--Jeremy Charron, Officer, Epsom (NH) Police Department, killed on 8/24/97. He stopped a suspicious vehicle at 5 a.m.; when he did not respond to a routine 'well-being' radio call, other units were dispatched to his location and found him shot but still alive near his cruiser, clutching the registration slip of the vehicle he had stopped. The shooters were eventually arrested, after a subsequent armed robbery.

--Kyle Dinkeller, Deputy Sheriff, Laurens County (GA), killed on 1/12/98. He was shot after he made a traffic stop of a speeding vehicle, the bullets penetrating his body armor. The shooter was a militia/survivalist member; the victim left a wife and a 18 month old child.[10]

Listed below are three of the Florida Highway Patrol Troopers killed during traffic stops, not atypical of the deadly outcome of traffic stops in other states, as well as Florida:

--Frederick J. Groves, Florida Highway

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[10]Jim McNulty, *1997 Roll of Honour* and *1998 Roll of Honour*, (last visited June 8, 1998) <http://www.ukexpert.co.uk/roll/roll96.htm>. This list is maintained by a retired police officer in Scotland. While the list is comprised almost entirely of Federal and State law enforcement officers in the United States, there are a few foreign officers listed, primarily from Europe and Japan. The 1997 list contains 161 peace officers who lost their lives while on duty.

Patrol Trooper; killed on 9/18/84 in Palm Beach County. He was shot during a routine traffic stop on a turnpike. The vehicle was loaded with marijuana and four subjects were subsequently apprehended.

--Jeffrey D. Young, Florida Highway Patrol Trooper, killed on 8/18/87 in Manatee; shot following altercation during a routine traffic stop.

--Bradley S. Glascock, Florida Highway Patrol Trooper, killed on 8/4/77 in Miami; shot during a routine traffic stop [of a person] for not paying a ten cent toll.[11]

*Amicus curiae* NAPO is not suggesting that all or most of these deaths could have been prevented if the officer victims had conducted a search incident to the issuance of a traffic citation. For example, some of the officers named in these reports and lists were accidentally killed by drunk or reckless drivers as the officers approached a stopped vehicle. It is also possible that the extent of violence towards officers during traffic stops may be understated in these sources, due to incomplete data on the circumstances surrounding the deaths of these officers. There is no way to know how many of these deaths or assaults could have been prevented, due to the paucity of information.

The crucial point is that a considerable number of police officer deaths and many more assaults can be prevented, if an officer is able to order the driver out of the vehicle, conduct a quick pat-down search for weapons, and then search the car for weapons, pursuant to a search incident to either an arrest or a

[11]State of Florida Highway Patrol, *Florida Troopers Killed in the Line of Duty*, (last visited June 3, 1998) <http:// www.fhp.state.fl.us>.



citation in lieu of an arrest, as allowed in Iowa.[12]

The deaths of these and other officers during traffic stops, and the assaults of thousands of other officers who were injured but not killed, should give pause to those who would minimize the public interest in protecting law enforcement officers and overstate the degree of intrusion that occurs when an officer searches a driver for weapons or evidence during a lawful stop of a vehicle.

Petitioner asserts that traffic stops are different from arrests because they present little or no danger to police officers, due to the officer's shorter period of exposure to the traffic offender. According to the Petitioner, "The motorist would be less likely to use violence against the officer if he knows he will be on his way once the citation is issued." (Petitioner's Brief, at 11-12.) But there is no empirical or other evidence in the record to support this proposition.

*Amicus Curiae* urges the Court to recognize that it is *not* the length of the stop which determines the likelihood of officer assault or death. Instead, a driver's recent or current criminal conduct, propensity to commit violence on others, or desire to escape is more indicative of whether a routine traffic stop will escalate into violence. Yet, such factors are usually unknown to the officer at the time of the stop.[13] There are numerous cases, included in the anecdotal evidence and in the statistics referenced above, where an officer stopped a vehicle for a traffic offense, not knowing that the driver was committing or had recently committed

[12]In a number of states, an officer cannot arrest an individual for a traffic infraction, for example, because it is handled civilly or as a lower class of misdemeanors with no right to arrest. Those state statutes, however, are not relevant to the instant case.

[13]*See, e.g.*, C. Floyd, *supra*, note 2, for several examples which illustrate this point.

a felony and was prone to violence. *Any* exposure during the process of conducting a license/registration check and writing a citation subjects the officer in such situations to a significant danger of injury or death.

For instance, assume *arguendo* that a person is driving a stolen vehicle, is the subject of an arrest warrant, or has recently committed a serious felony. If a police officer stops this driver for a traffic violation and runs license, registration, and warrant checks, the driver has ample opportunity and may well seek to harm the officer, without waiting until a formal arrest has been effected. The brief period necessary for the officer to stop the vehicle and to conduct these checks provides ample time for a driver to assault or even kill the officer. There are numerous examples that illustrate the frequency with which deadly violence does occur. For example, on May 6, 1995, a New Jersey police officer was shot twice in the head and neck, as he was simply examining a driver's license. He died nine hours later.[14]

Reasonable efforts by state governments to reduce such violence against law enforcement officers should be upheld. Iowa Code §805.1(4), allowing for searches if a citation is issued in lieu of an arrest, is a reasonable effort to balance the public interest of reducing the danger to law enforcement officers during traffic stops cases and motorists' right to privacy. Simultaneously, it makes available to officers the less intrusive tool of issuing a citation in lieu of a custodial arrest. Therefore, this code provision embodies the public interest in protecting law enforcement officers, as recognized by the State of Iowa. This Court should thus be reluctant to hold unconstitutional the reasonable application of this statute, given the weighty interest in officer safety.

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[14] *Id.*



**II. IOWA CODE SECTION 805.1.4 ESTABLISHES AN IMPORTANT PUBLIC POLICY. FIRST, IT RECOGNIZES THAT THE DANGER OF VIOLENCE TO A LAW ENFORCEMENT OFFICER DURING A LAWFUL TRAFFIC STOP AND DETENTION CONTINUES IRRESPECTIVE OF WHETHER THE DRIVER IS EVENTUALLY ARRESTED OR GIVEN A CITATION INSTEAD. SECOND, THE STATUTE CONFERS ON AN OFFICER THE DISCRETION TO ISSUE A CITATION IN LIEU AN ARREST DURING TRAFFIC STOPS, WHICH IS LESS INTRUSIVE THAN AN ARREST. THEREFORE, WHENEVER THERE IS PROBABLE CAUSE TO ARREST FOR A TRAFFIC OR OTHER VIOLATION, A SEARCH OF THE DRIVER AND OF THE PASSENGER COMPARTMENT INCIDENT TO A CITATION IN LIEU OF AN ARREST IS REASONABLE UNDER THE FOURTH AMENDMENT.**

The Fourth Amendment of the U.S. Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A vehicular stop is therefore subject to the constitutional imperative that it not be "unreasonable" under the circumstances. The decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 1772 (1996).

The authority to search individuals and vehicles after a traffic stop must be examined in the larger context, beginning with the detention of the vehicle and the reasons for the traffic stop under the Fourth Amendment. As this Court stated in *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138 (1984):

> It must be acknowledged at the outset that

> a traffic stop significantly curtails the "freedom of action" of the driver and the passengers, if any, of the detained vehicle. Under the law of most states, it is a crime either to ignore a policeman's signal to stop one's car, or once having stopped, to drive away without permission. [Citation omitted.] . . Partly for these reasons, we have long acknowledged that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth] Amendment, even though the purpose of the stop is limited and the resulting detention quite brief." [Citation omitted.]

468 U.S. at 436-437.

**A. The purpose of searching the driver and the inside of the vehicle incident to an arrest is to discover weapons (to disarm the driver) and to preserve evidence (to prevent its destruction). These needs to search exist irrespective of whether the detention eventually results in an arrest or in the issuance of a citation in lieu of an arrest.**

Whenever a law enforcement officer lawfully detains a motorist for a violation of a traffic or other law, special dangers exist for the officer both before and after the arrest of the motorist. In order to protect themselves, law enforcement officers must be able to conduct searches of the driver and the immediate surrounding area. The rationale for such searches was set forth in the landmark Supreme Court case of *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034 (1969):

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might



> seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

395 U.S. at 762-763.

This Court has relied upon *Chimel* to authorize searches in connection with vehicular stops. Whenever there is probable cause to arrest an individual for a traffic violation, law enforcement officers may contemporaneously conduct a search of the individual incident to an arrest. *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467 (1973). Furthermore, the police may search a vehicle's passenger compartment, as a contemporaneous search incident to a lawful arrest of a vehicle's occupant. *Belton v. New York*, 453 U.S. 454, 460, 101 S.Ct. 2860 (1981).

In *Robinson*, the Court upheld a search of a defendant incident to an arrest for the offense of driving on a revoked driver's license. The Court refused to qualify the breadth of general authority to search incident to a lawful custodial arrest, rejecting the argument that individuals stopped for traffic offenses were less likely to possess dangerous weapons than those arrested for other crimes. *Robinson*, 414 U.S. at 234.

It is indisputable that arrests pose very dangerous situations, especially in comparison to the *Terry* stop-and-frisk situation. The Court stated in *Robinson*:

> It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into

> custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical Terry-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

*Id.* at 234-235. *Robinson* emphasized that an arrest situation is more dangerous than the shorter *Terry* situation, due to the "extended exposure" which occurs during the procedure of carrying out the arrest.[15]

The Court in *Robinson* did not have before it a search based on a detention arising out of a traffic stop and the issuance of a citation in lieu of an arrest.[16] Therefore, *Robinson* is not determinative of the reasonableness of a search based on a lesser exposure of time involved in an issuance of a citation instead of an arrest. Until the present case, this Court has not addressed the issue of whether the dangers faced by police officers during a traffic stop and detention, based on probable cause to arrest for a traffic offense, are sufficiently similar to those faced during an actual arrest.

Although the duration of a routine traffic stop is usually shorter than an arrest, the detention of a driver for a traffic or other offense need not be long to constitute a dangerous situation for the

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[15]In *Robinson*, the Court observed, first, that taking a suspect into custody and transporting the suspect to the police station contributes to this extended exposure and, second, that a search incident to an arrest is justified and reasonable because this prolonged period of time presents more danger to police officers. *Id.*

[16]It is important to recall that the focus of the Court in *Robinson* was the reasonableness of searches incidental to *all* custodial arrests, no matter what the offense or the probability that the driver was armed and dangerous.



police. During a traffic stop, a definite period of time for a license and registration check is required, as the officer radios for a check on that information, waits for a reply, and then decides whether to make an arrest or issue a citation. During this time, a dangerous suspect sitting in the vehicle does not know whether he or she will receive a traffic citation or will, instead, be arrested. The incentive to harm an officer is the same in both situations.

Although issuing a citation in Iowa may not involve taking the driver to the police station, as did the arrest in *Robinson*, very real and substantial dangers to police officers exist in both situations. Where a police officer has stopped and detained the driver, based on probable cause to arrest for a traffic offense, very little time is needed for the driver or an occupant of that vehicle to assault, injure, or kill a law enforcement officer. Therefore, the principle enunciated in *Robinson* can be applied to traffic stop situations where no arrest has yet occurred.

**B. The crucial element conferring upon law enforcement officers the right to conduct a search incident to such an arrest is probable cause to arrest for a traffic violation, not the actual arrest itself, which may occur after the search, and not the motivation of the officer making the traffic stop.**

Previously, in determining the lawfulness of a search incident to an arrest, this Court has focused on whether a police officer had probable cause to make the arrest. For example, in *United States v. Robinson*, this Court found that the officer had probable cause to arrest the defendant for operating a vehicle after the revocation of his operator's permit, and therefore the subsequent search of the defendant, revealing heroin capsules contained in a crumbled cigarette package, was constitutional.

Similarly, in the present case, Officer Cook had probable

cause to arrest Petitioner Knowles for violating a traffic law, after the officer observed Knowles speeding. Thus, the police officer was entitled to conduct a search incident to arrest. Although the officer here did not ultimately arrest the defendant, as was the case in *Robinson*, the officer's right to conduct an otherwise lawful search incident to arrest is not invalidated: The existence of the initial probable cause to arrest for the traffic violation alone justifies the search in this case. In other words, since the officer had probable cause to arrest Knowles, the mere fact that the officer ultimately issued a citation in lieu of an arrest does not render the search here unreasonable under the Fourth Amendment.

Once probable cause to arrest has been established, the authority to conduct a search incident to arrest has been consistently upheld, in order to secure the officer safety and prevent the destruction or concealment of evidence. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). Consequently, the timing of the actual arrest has not been considered to be significant, and the courts often have granted police officers considerable leeway in deciding upon the best procedure of arrest. In *Rawlings v. Kentucky*, 448 U.S. 98, 100 S.Ct. 2556 (1980), this Court noted that, where the police "clearly" had probable cause to place the petitioner under arrest, "we do not believe it particularly important that the search preceded the arrest rather than vice versa." *Id.* at 111. Likewise, in *Sibron v. New York*, 392 U.S. 40, 88 S. Ct. 1889 (1968), in a concurring opinion, Justice Harlan stated that once probable cause to arrest is established:

> There is no case in which the defendant may validly say, "Although the officer had a right to arrest me at the moment when he seized me . . . the search is invalid because he did not in fact arrest me until afterwards."

392 U.S. at 77.



In addition, for more than twenty-five years this Court has upheld the concept that the subjective thought process of individual police officers in conducting searches is irrelevant to situations where probable cause to arrest exists. In *Gustafson v. Florida*, 414 U.S. 260, 94 S.Ct. 488 (1973), this Court found that because an officer had probable cause to arrest the petitioner for the offense of driving without a valid operator's license, the officer was entitled to conduct a search incident to that arrest, notwithstanding the fact that the officer expressed no subjective fear of the petitioner nor believed that the petitioner was armed. 414 U.S. at 266. More recently in *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996), this Court reaffirmed this principle by refusing to judge the "constitutional reasonableness" of traffic stops based on motivations of individual police officers where the probable cause to arrest for a traffic violation was present. *Id.* at 1772-1774.

Where probable cause to arrest has been established, the authority to conduct a search incident to arrest no longer falls within the limited realm of a *Terry* "stop and frisk." "[T]here is a 'distinction in purpose, character, and extent between a search incident to arrest and a limited [*Terry*] search for weapons.'" *Robinson*, 414 U.S. at 227, quoting *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968). *Terry* is therefore inapplicable to the instant case. As this Court stated in *Gustafson v. Florida*, 414 U.S. 260 (1973):

> Our decision in Robinson indicates that the limitations placed by *Terry v. Ohio*, *supra*, on protective searches conducted in an investigatory stop situation based on less than probable cause are not to be carried over to searches made incident to lawful custodial arrests.

*Id.* at 264.

Contrary to the Petitioner's contention that probable cause to arrest for a traffic violation does "not justify any type of search, including a *Terry* pat-down" (Petitioner's Brief at 11), the officer's detention and search in this case, taken together, was sufficiently similar in character to an arrest situation and was fully justified, in light of the probable cause to arrest Knowles for a traffic violation.

In summary, it is the probable cause to arrest, and not the timing of the arrest or subjective reasoning of the police officers, that is the crucial element determining the lawfulness of a search incident to arrest. Furthermore, the important needs to secure officer safety and to preserve evidence continues regardless of whether the existence of probable cause to arrest results in an actual arrest or issuance of a citation.

*Amicus Curiae* NAPO urges the Court to extend the rationale underpinning *Robinson*, *Rawlings*, *Sibron* (Justice Harlan's concurring opinion), and *Gustafson*, and to recognize that the ultimate charging decision made by a police officer should not affect the validity of a search incident to a citation in lieu of an arrest. *As long as probable cause to make an arrest initially exists*, it should not matter whether an arrest occurs after the search or whether a citation is ultimately issued in lieu of an arrest. Under such a circumstance, issuing a citation should not invalidate the authority to make an otherwise lawful arrest. Such a search is not unreasonable and therefore does not violate the Fourth Amendment.

**C. Issuance of traffic citations in lieu of making arrests for traffic offenses is significantly less intrusive than an arrest and therefore should be encouraged and not deterred by any requirement that an actual arrest must occur before an officer can conduct a search for weapons or concealment of evidence.**



Petitioner states in his brief that, as an alternative to the current Iowa statute and practice of authorizing issuance of a citation in lieu of an arrest, the State of Iowa "could simply arrest and search all traffic offenders." (Petitioner's Brief at 23). In other words, Knowles asserts that if Iowa has an interest in searching violators of traffic laws, then police officers should be required to make an actual arrest before being able to conduct a search.

If this Court accepts the Petitioner's argument and reverses the decision of the Iowa Supreme Court, then the effect would be to mandate that police officers actually arrest every traffic offender before they are able to conduct a search of the person and the passenger compartment of the vehicle. It would compel police in a rural state to either forego a protective search for weapons or transport the potential dangerous offender many miles to the nearest county jail. The likely result of a reversal of the Iowa Supreme Court's decision would be many more formal arrests and fewer citations, a definitely more intrusive policy than currently exists, which would tie up law enforcement resources for longer periods of time, as arrested drivers are transported to jails.[17]

Instead, Iowa's policy of conferring on law enforcement officers the discretion to issue a citation in lieu of an arrest, without taking away the officer's right and obligation to conduct a brief search of the person and the passenger compartment of the car for safety reasons, offers a more reasonable approach. Such an approach does not unnecessarily intrude upon motorists committing traffic offenses, but at the same time it furthers the weighty and important public interest in securing a safe

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[17]The *Amicus Curiae* brief of the American Civil Liberties Union, the Iowa Civil Liberties Union, and the National Association of Criminal Defense Lawyers concedes in their brief, at 20-21, that making arrests in lieu of citations for all or most traffic stops would be much more intrusive.

environment for police officers. The Iowa statute properly enables Iowa law enforcement officers to follow a less intrusive means than a formal arrest during routine traffic stops, thereby benefitting many Iowa residents who occasionally violate traffic codes.

## CONCLUSION

For the foregoing reasons, *amicus curiae* National Association of Police Organizations, Inc. urges the Court to apply the doctrine of searches incident to lawful arrests to lawful issuances of citations in lieu of arrests during traffic stops and detentions, given the substantial public interest in officer safety and the important rationale underpinning the Court's past cases concerning searches incident to an arrest.[18] Therefore, *amicus curiae* respectfully requests that the Court affirm the judgment in this case of the Supreme Court of the State of Iowa.

*Respectfully submitted this 24th day of June, 1998,*

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[18]We recognize that this serious danger is faced by all law enforcement officers making traffic stops, including those in many other states where officers, not having the flexibility of Iowa officers, can only issue a citation for a traffic offense and not make an arrest. However, the narrow issue before this Court is the constitutionality of searches of drivers and the passenger compartments of their vehicles as incident to the issuance of a citation in lieu of an arrest, pursuant to this Iowa statute.